



FOLLOW-UP REPORT

*The Tenth Annual
Dean's Forum on Access to Justice
and Dispute Resolution*

Thursday March 10, 2022

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I. INTRODUCTION

The tenth annual Dean's Forum on Access to Justice and Dispute Resolution was held on March 10, 2022, at the University of Saskatchewan. The Dean's Forum students presented their policy paper titled *Examining Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry*. They invited attendees to apply the framework presented in their policy paper to scenarios and report back on the efficacy, challenges, and opportunities of the virtual facilitation predictive framework (see Appendix A for the presentation slides). The event generated enthusiastic dialogue among attendees, and the diversity and experiences of those in attendance contributed to the lively debate and discussion that took place at the forum (see Appendix B for the forum agenda).

The morning of the forum included the presentation of the policy paper followed by a large group discussion on reactions to the framework (found on pages 33-38 of the policy paper) and the practice checklist (found on pages 50-51 of the policy paper). The Dean's Forum students wanted to learn what surprised attendees, if anything appeared counterintuitive, or if there was anything in the framework or practice checklist that attendees expected to see but was missing. The presentation was very well-received by attendees.

The presentation informed attendees about the problem and questions examined by the students, provided a conceptualization of what terminology can be used when discussing 'online court processes,' and the methodology used for the policy paper. The presentation also covered who was consulted, the principles that were used to guide the development of the framework in the policy paper, what consultees shared with the students in relation to their experiences at the Court of Appeal, Court of Queen's Bench, Provincial Court, and at ADR processes including mediations and administrative tribunals. Finally, the predictive framework was presented to the attendees.



Dean's Forum Students & Faculty (from left): Ciara Richardson, Reed Boychuk, Stephanie Pankiw, Tasia Presber, Brea Lowenberger, Dean Martin Phillipson, Liam McDonald & Robeah Sae

The presentation session built a lot of momentum moving into the afternoon sessions. In the afternoon, attendees had the opportunity to apply the predictive framework in two scenarios related to accessing justice and the virtual facilitation of court and alternative dispute resolution processes (see Appendix C for the scenarios discussed by attendees).

During the small group break-out exercises, attendees were challenged to apply the predictive framework to two scenarios and reflect on threshold considerations such as accessibility and human competency. Following this, the group joined back together to discuss the results of applying the framework to scenarios A and B. Attendees were asked which questions from the framework were easy to answer, which were challenging, and what issues emerged that were not captured by the framework. The day concluded with a group discussion on navigating the path ahead and how organizations and attendees could see themselves using the framework moving forward in a 'post pandemic' world. Of special note, for the tenth anniversary of the forum, attendees gathered at the College of Law for a special reception to toast to the impact of the last 10 years of the Dean's Forum. Attendees and students considered their hopes for improving access to justice in Saskatchewan over the next decade. This final report will highlight key themes from the forum day, summary of discussions throughout the day, and the next steps.

II. KEY THEMES

Some of the more consistent themes discussed during the day surrounded cost, agency, and marginalized populations. The attendees were reasonably concerned about the cost of innovation, the agency of the individual litigant, and the vulnerability of certain parties that remain a consistent issue.

A lot of questions arose concerning who bears the cost? For example, it was a generally well-received suggestion that infrastructure be the first step in providing access to justice during these technologically innovative times. The idea of an iPad being sent to every home may be a great solution until the answer to the question of who bears the responsibility of subsidizing these costs arises. The attendees seemed to agree that where a technological advancement leads to more convenience for the lawyers, judges, and mediators, but a greater barrier for the client who is already economically disadvantaged, is no advancement at all.

The issue of cost goes hand in hand with issues surrounding more vulnerable and marginalized populations. We had the benefit of having, as attendees, members of the community who are actively involved in exacting positive change for members of marginalized communities. Their insight was invaluable. In particular, these attendees made note that until we are addressing the individual issues of the marginalized parties, additional technology will never be a positive solution for all litigants. An example provided was the issue of a working phone. The attendees who have worked with marginalized parties explained that many people who are struggling to get back on their feet will not have consistent access to a phone, potentially leading these individuals to miss calls from court, parole officers or lawyers. These may be individuals who have the best possible intentions and aspirations to make changes in their life but are unable to do so because the justice system may not be well-suited to address each of their individual needs. It should be no secret that in general the legal landscape is more favourable to white, privileged litigants. There

must be a change that involves inclusive, comprehensive inquiry into each case and one that takes into consideration distinct needs. Finally, the topic of agency was a recurring theme. The importance of empowering litigants to push for whatever will be most effective was reiterated throughout the day. A hybrid approach appears to be the new normal within the legal system moving forward. This being the case, as attendees have indicated, it is incumbent on the lawyers, judges, legal professors, mediators, court workers, and all parties working with the public to ensure that they play a role in empowering people to know their rights. Attendees stressed the importance of being alive to these issues (of technology and innovation and how certain parties may fall through the cracks), staying current with these issues, and reminding litigants of their choices.

III. SUMMARY OF DISCUSSIONS

In the following section, the discussions for each part of the day are summarized. The sessions are summarized in the order they occurred (see Appendix B for the day's agenda). In the afternoon, two scenarios were discussed. The details of each scenario can be found in Appendix C.

Large Group Discussion: Gathering Feedback and Reactions to the Policy Paper

Immediately following the PowerPoint presentation, the team engaged in an open discussion with the attendees. The attendees were involved and offered great insights into the project and what can be done in future.

One participant first made the observation that when it comes to hybrid online and in person processes and what the next steps are, we first need to establish who the decision makers are in this. Who determines whether a legal process will take place online or in person? This question led to important discussions around the “de-brief table” and will likely inform next steps for any parties who take on this topic in the future.

In terms of the lived experiences, we were able to hear from one participant who noted that there is an ease and a convenience factor associated with online adjudication. In response to this, another participant asserted that convenience should never be the primary consideration in discussing new innovations in technology and the legal system. Balancing these factors was a consistent theme throughout the day.

One stakeholder acknowledged that they had worked consistently with more marginalized parties and that this informed their opinion on the matter. Their observation was that innovations in technology have the capacity to both help and hurt marginalized parties. On the one hand, the ability to meet virtually meant, for some people, the cost of travelling to court and taking a whole day away from work or family (or other dependents) was a significant cost-saving. On the other

hand, marginalized parties may not have access to the necessary technology. This is where it was highlighted that agency is crucial. Where these parties have options, they have a better chance of doing well in the legal system.

The discussion remained focused on vulnerable parties in the justice system for a significant amount of time and suggestions were offered as to how to help those who are already vulnerable in the system. The SALI project (Saskatchewan Access to Legal Information) was mentioned more than once.¹ Attendees who mentioned this project made note of its benefits. The project utilizes public libraries as an “accessibility point” wherein parties can find legal information. There is always the possibility that this could extend to more legal services for those parties without access to technology or information regarding the legal system.

While many spoke excitedly about the possibilities associated with technology, some attendees pointed out the inherent deficits of the online system, particularly for serious trials. One participant told the story of a litigant who arrived at online court from their bed. This propelled the room into a conversation surrounding deference to the court and the potential loss of veneration that comes with a litigant “zooming in.”

The consensus overall seemed to be that it simply depends. Where litigants have access to technology, resources, and the appropriate supports that they need, the online process can be a great tool that can save time, money and is, overall, very efficient. However, technological advancements can also magnify an already polarizing system that will re-traumatize parties who have been mistreated, left out and fallen through the cracks in the past. These sentiments solidified our view that technology will never be a “silver bullet” solution.

Small Group Break-Out Exercise: Applying the Proposed Framework to Scenario A

Discussions among the attendees about Scenario A found that the virtual facilitation of the mediation proceeding was a benefit to the client and the client’s need to pray. One individual pointed out a hypothetical situation that if the mediation had taken place in person, the clients need to pray may have never come to light. In addition, the virtual facilitation of the process provides accessibility for the client, who was taking care of an immunocompromised child. On the point of privacy, one attendee pointed out that it may not be the biggest concern for a mediation. That is, if someone overhears the conversation or walks into the room during a mediation process, it potentially would not be as serious compared to if someone did so during a testimony. However, a failure to keep the conversation private would still go to the confidentiality of the mediation.

¹ CREATE Justice, “SALI | Saskatchewan Access to Legal Information Project” (last visited 14 March 2021), online: *University of Saskatchewan, College of Law* <law.usask.ca/createjustice/projects/Saskatchewan-Access-to%20Legal-Information.php>.

The attendees concluded that the success of virtual facilitation might come down to how well the parties are prepped before the meeting. One invitee pointed out that there is a reasonable expectation that lawyers will adequately prep their clients. We must confirm what the process will be, make sure the client knows what the process will be, and make sure that the client knows the rules that are in place for the procedure. It is up to the justice sector to ensure the institution works.

Small Group Break-Out Exercise: Applying the Proposed Framework to Scenario B

Group 1 focused on accessibility and cost from the framework and checklist. The group brainstormed various solutions, such as the possibility of having a phone as a backup plan if John Doe cuts out during his court date. Further, one member of the group mentioned that there are technology packages that could be sent to John Doe which may be a process solution. Ultimately, the group held that this is a case where we must wait for technology to catch up.

Group 2 focused on accessibility. They saw this scenario as one that is less about technology and more about accessibility generally. This touches on the silver bullet idea mentioned earlier in the day. One participant mentioned that a hybrid is a great option. Which led to a discussion about the importance of being able to identify when remote proceedings will work and when they will not. This would also require an understanding that sometimes clients need their “day in court”. While there is an acknowledgement of the benefits of technology, there must also be times when an acknowledgement is made of the deficits surrounding these advancements. There should be a place for broader discussions to determine where online proceedings are appropriate and where they are not. Before implementing an online proceeding, we must ensure that we do not weaken the system and that everyone feels heard. Attendees mentioned that the personal impact on the person needs to be considered. Even if the matter is simple, it can have a massive impact on the person.

Large Group Break-Out Debrief: Sharing Scenario Results

The large group break-out debrief for Scenario A was based on a discussion of how mediation is a process. During a mediation process, a major aspect of it is the lead-up. Therefore, the preparation each party takes leading up to the mediation is an essential aspect of the process. So, during the debrief, attendees held that we should work to avoid such issues prior to the mediation even taking place. We need structure to create a safe environment because it is not about technology, but actions that lead up to the mediation. In preparing for a mediation, for example, one can ask what can be predicted, what might happen, and how to deal with it in advance. Overall, the group saw the online process as a benefit to the client in this scenario.

Attendees noticed that both scenarios have infrastructure and procedural issues. During COVID, current processes were moved online, and it simply was not possible to engage in a broader transformation of the legal system at the same time. Now, we need to reflect and work to transform this process. Attendees discussed that we should think from the ground up about the infrastructure that is required. In order to advance access to justice, one must have the technology to make it

happen. Moving forward, infrastructure will decreasingly mean roads and highways, but would also include technology.

Further, the legal culture is an aspect that needs to be discussed since both scenarios challenge it. One participant mentioned that it is not technology that makes people lose respect for the courts. Remote processes have made people feel less heard in the judicial system, especially for vulnerable populations. Therefore, legal culture needs to be discussed in the broader sense, taking into account how it affects the bigger picture. There is a difference between respect and deference to the courts. Respect for the courts is something that must be earned, and this means taking into consideration the specific needs of the individual litigant. The legal system cannot be painted in broad strokes and each litigant will bring with them a different relationship with the legal system, different traumas, and may benefit from different treatment by the system.

Large Group Break-Out Debrief: Moving the Framework Forward

In a large group, we discussed how attendees felt applying the framework went overall and what they felt was easy or challenging about the process. One invitee stated that applying the accessibility principle was easiest. When considering the principles that come later in the analysis, (i.e., human competency, legal intricacy, personal impact) the questions were harder to answer.

The discussion proceeded with one invitee pointing out that in the pandemic, the justice sector had to make virtual facilitation happen, however, if there is going to be a system for using technology in the justice system going forward, it must be clear why we are deciding to do so.

We discussed what critiques, feedback or issues attendees had for the framework. Regarding the human aspects, one invitee stated that sometimes the answer depends on who is asking the questions. Certain individuals asking the questions may create an environment where the person they are asking does not feel safe to answer honestly. Furthermore, attendees pointed that people often lie and there could be concern as to whether those who are asked the questions are honest in their responses regardless of the person asking the questions.

One invitee took issue with the term “human competency” as it seems to imply that there is something wrong with the person. However, some people simply do not understand the technology because they have not had the chance to learn how to use it. Furthermore, one invitee pointed out that we cannot be comparing human competency in virtual proceedings to some other state of perfection that does not exist. It is not that individuals understand better during in person proceedings, but there are people present that can help when individuals do not understand.

For the legal intricacy principle, attendees discussed the issue of timing. Most of the work done in tribunals operates so that a person does not usually know what kind of evidence they need at the time the proceeding is scheduled. Therefore, when applying the framework, a person would not

know if the proceeding should be held online or not. As a result, there may need to be re-assessment at later points to decide whether the proceeding should be carried out in person or online.

Importantly, one invitee pointed out that if the justice sector returns to Indigenous principles of restorative justice, digital processes will not work. Another invitee asked whether introducing technology into the justice system is the priority and the discussion became whether or not communities that are struggling even want online platforms.

Large Group Discussion: Navigating the Path Ahead

Our final discussion of the day focused on how the justice sector will move forward. Attendees asked questions surrounding who will take charge of implementing technology in the justice system and who will oversee making sure the technology works after it is implemented. Attendees from several non-profit legal assistance organizations, the Court of Appeal, and the Court of Queen’s Bench all weighed in. Some stated that they are going to take the framework we created and use it in their offices as a starting point in implementing technology. The discussion concluded with an invitee stating that effectively implementing technology has been a priority for their organization and that they are always open to discussion on the topic.

III. NEXT STEPS: THE FRAMEWORK

The day of the Dean’s Forum allowed for significant discussion and interaction with the framework and checklist by all attendees. The scenarios in particular identified areas to expand on in the framework to support a more holistic view on the administration of justice. Scenario A, for example, invited suggestion on expanding the “Personal Impact” portion by adding questions about a human rights element as shown below.

Personal Impact	
Does the party require any accommodations that may be covered under human rights legislation including but not limited to: physical or mental disabilities, use of an interpreter, religious accommodations etc. <hr/> <hr/>	
If accommodations are necessary, which method is preferential to accommodate the party? Circle preferred method. What accommodations are needed? Remote: _____ In Person: _____	
Considerations in favour of a remote process	Considerations against a remote process

<input type="checkbox"/> The matter is routine and has a low personal impact on the parties <input type="checkbox"/> The parties will feel safer appearing remotely	<input type="checkbox"/> The matter is highly sensitive and personally important to the parties <input type="checkbox"/> The solemnity of the process is important to fulfil the goal of recidivism
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Attendees mentioned that they would customize the framework for their organization depending on the remote options they are able to offer and accessibility of their respective clients or litigants. One participant mentioned that they would use the framework as a starting point for conversation around how best to capitalize on remote options going forward in the Provincial Court. Another stakeholder indicated that they would be using the framework to discuss with his clients to help them understand their options. Finally, we heard from attendees who also mentioned that they would be using the framework as part of a larger policy framework for a tribunal. While the Dean's Forum created the original model of the framework, its uses and customization options are limitless for any organization looking for a starting point to increase access to justice with remote processes available.

The Final Decision

This Dean's Forum created a framework and checklist to determine if a justice process should take place online or in-person, depending on a set of principles and a people-first approach. This approach is only a starting point as was realized on the day of the Dean's Forum when an attendee asked, "Whose decision is it anyways?". This is an essential question since the framework was designed for use by all parties involved in the matter; the litigants, the administrators of the justice forum, and the decision-maker. However, since each justice process or forum is different, the framework does not answer who should have the final call on if the process is going to take place online, through virtual facilitation or digital transformation, or in-person. The following discusses scenarios through the lens of the litigant, decision-maker, or the administrators of the forum.

Final Decision: The Litigants

In a scenario where the litigants have the final call, their preferences have priority over the judge or administrators of the process. This increases access to justice by empowering the litigants to choose the best process for their matter. For example, a Court of Appeal hearing involves the litigants, justices and the court or registrar. The litigants would go through the framework, likely with their lawyers, and decide on whether attending in person or virtually is the best option. Litigants may have differing opinions on if one party may attend in person if the other party is attending virtually. This is where the final decision on the process becomes a concern. At this point, a hybrid model is used with one party appearing virtually and the other in person. The justice and court registrar would be tasked with accommodating the preferences of the litigants. This hybrid process revealed an area for improvement in the framework on how the other litigant may

perceive the administration of their matter, if a hybrid model is used. Going forward, this question must be answered in order for society to be satisfied with and continue to show respect and deference to the court.

Final Decision: The Decision-Maker

The decision-maker, be it a judge, justice, mediator or arbitrator, may have the final decision in many forums. If the litigants are in different locations, or if they cannot come to a consensus to appear by the same method, the decision-maker may make a unilateral decision for all parties. In the same example of a Court of Appeal hearing, a justice may decide to hold the hearing virtually if one litigant is not willing to appear in-person. This may decrease the acceptance of the decision for the litigant who was willing to appear in-person. However, it may act as an equalizer in the process. It should be noted that in the absence of further data on the pros and cons of this system, and the fact that we are still in the infancy stages of online processes, we cannot be sure how this will impact the “people-first” approach that we always hope is fostered in the system. Access to justice is a growing tree, and we must be prepared to adapt in order to determine what needs are or are not being met. As mentioned on the Dean’s Forum Day, “Efficiency should not take precedence over issues such as access to justice.”

Final Decision: The Administrator or Registrar

Regardless of the opinions of the litigants or decision-makers, capability of the respective forums does play a role in which options are available. If one party does not have the capabilities to appear virtually or if the court is not outfitted with a hybrid model, virtual appearances may not be possible. The same can be said about the numerous tech issues that many attendees of the Dean’s Forum discussed on the day of. While the Court of Appeal does have hybrid options available, a mediator or arbitrator may not have the same option. By default, the administrators of the process may have the final decision on how the process is delivered. Alternatively, in smaller tribunals, they may choose to appear exclusively online, leaving no options for any party involved. Once again, this approach does sway from the “people-first” perspective used in the paper. In the future, administrators of justice must be mindful of their authority over the process and work to increase access to justice and satisfy the participants of the administration of justice.

The framework does not currently specify which party has the ultimate decision over the process and it will be up to each forum to decide how to tackle the hierarchy of authority and preference. The scenarios above could be discussed by each organization as a secondary step to the framework to determine the best way to make the final call on the method of appearing for each matter.

IV. NEXT STEPS: DIGITAL TRANSFORMATION BEYOND THE FRAMEWORK

In addition to inspired conversation regarding our predictive framework, the attendees often engaged in discussion that went beyond the scope of *assessing virtual facilitation* and crept into the realm of *realizing digital transformation*. For example, in one of the afternoon small groups, attendees were quick to identify the issue of accessibility within Scenario B using the framework. Once the threshold issue of accessibility was identified as a barrier, our assumption was that since virtual facilitation is therefore impossible, the analysis ends. However, this break-out group naturally transitioned into a discussion about potential solutions to the issues that they had identified. This represented an important shift in how we looked at the framework. Instead of thinking about the framework as a go-or-no-go decision making tool, we suggest that stakeholders use the framework as a tool for identifying additional issues that might be solved with the assistance of technology. In this way, the framework can adopt a broader aim in helping stakeholders move closer to the goal of digital transformation of the legal system.

In the aforementioned break-out group, one of the unique ideas that was floated during the conversation on accessibility was a traveling virtual facilitation bus that would contain all of the necessary equipment to join remote court proceedings. The bus would travel around the province with technical support staff who can help train parties on the workings of the technology and help them connect to their court proceedings. This idea flips the traditional ‘traveling court’ on its head. Instead of flying in judges to assemble a court in a remote location, judges stay put, and participants can join from around the province. It is this kind of unique ideation that we see as necessary for the justice system to move toward digital transformation. Of course, as quickly as the group came up with the idea, they came up with several outstanding questions. In any kind of transformative project like this, the obvious hurdles are who takes responsibility for the implementation, and who foots the bill.

During one of the large group sessions at the end of the day, one participant asked a similarly pointed question: If the Court of Appeal was ready to implement a certain technology, where would the budget come from? This question is rooted in an issue that was identified in 2013 in the CBA’s report on reaching equal justice in Canada. In the report, the CBA points out that the justice system operates as a “body without a brain.”² Or, to put it “less colorfully, it has been said that the justice system lacks a CEO.”³ Against this reality, the legal organizations in Saskatchewan need to continue the dialogue with one another to move forward collectively and make significant progress towards digital transformation in the province.

² The Canadian Bar Association, “Reaching Equal Justice Report: An Invitation to Envision and Act” (November 2013) at 48, online (pdf): cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf.

³ *Ibid.*

In that spirit, we have collected five key areas of inquiry that remained from our conversation during the Dean’s Forum. These topics are presented below in the format of proposed agendas that the organizations who attended could use to further the dialogue. For each topic, the issue has been framed as a forward-looking question. Stakeholders and secondary questions have also been identified on a preliminary basis. These are in no way closed lists and should not be taken to exclude other parties who might have something to say on any given matter.

Topic	Proposed Stakeholders and Guiding Questions
<p>How might we consistently apply the framework to legal matters across the province, and who is responsible for asking the questions?</p>	<p>Court of Appeal for Saskatchewan, Court of Queen’s Bench for Saskatchewan, Saskatchewan Provincial Court</p> <p>What roles do judges have in the assessment of success of virtual facilitation?</p> <p>Legal Aid Saskatchewan, CLASSIC, PBLs, Law Society of Saskatchewan, Law Reform Commission, Ministry of Justice, Practicing Lawyers</p> <p>What role do lawyers have in protecting their clients’ interests when virtual facilitation is an option presented?</p> <p>What role do legal stakeholders have in improving accessibility to technology if it can further the aims of access to justice?</p>
<p>How might we maintain fairness in a hybrid world when one party appears remotely, and one appears in person?</p>	<p>Court of Appeal for Saskatchewan, Court of Queen’s Bench for Saskatchewan, Saskatchewan Provincial Court</p> <p>What are the specific plans of each level of court in allowing for hybrid appearances?</p> <p>How were these decisions made, and what considerations have been made to ensure fairness?</p> <p>Law Society of Saskatchewan, Law Reform Commission, Practicing Lawyers</p> <p>How can lawyers best assess the fairness of hybrid models and advocate for their needs in a hybrid process?</p>
<p>How might we use the justice network to provide technology to parties who do not meet the requirement for current accessibility?</p>	<p>Legal Aid Saskatchewan, CLASSIC, PBLs</p> <p>Would the provision of technology to parties without access help or hinder vulnerable populations?</p> <p>What additional resources beyond physical assets are required to help educate parties on the use of technology?</p> <p>Ministry of Justice, PLEA</p> <p>What resources are available for the provision of technology to parties without access?</p> <p>What resources are available to train parties on the use of technology in justice processes?</p> <p>Corporate Partners</p> <p>Are there opportunities to leverage Corporate Social Responsibility programs to invest in technology that would expand access to justice?</p>
<p>How might we find the budget for the digital transformation of the legal system in Saskatchewan?</p>	<p>Court of Appeal for Saskatchewan, Court of Queen’s Bench for Saskatchewan, Saskatchewan Provincial Court</p> <p>What kinds of technology are the courts looking to implement?</p>

	<p>Ministry of Justice e-Justice Initiative, Law Society of Saskatchewan, Law Reform Commission</p> <p>What kinds of technology might be implemented beyond the courts to further the goals of access to justice?</p> <p>Ministry of Justice, Corporate Partners</p> <p>What will these solutions cost and how might we justify that cost to those who control the budget?</p>
<p>How might we earn the trust of litigants who – for good reason – lack respect for the legal system?</p>	<p>Court of Appeal for Saskatchewan, Court of Queen’s Bench for Saskatchewan, Saskatchewan Provincial Court</p> <p>What does deference and respect towards the courts look like in the courts in a virtual context?</p> <p>Is there crossover between this question and the calls to action from the Truth and Reconciliation Commission? If so, how can the calls to action be implemented in a way that promotes mutual respect?</p> <p>Legal Aid Saskatchewan, CLASSIC, PBLs, Law Society of Saskatchewan</p> <p>What kinds of process outcomes are required for deference and respect to be upheld?</p> <p>Technology Providers</p> <p>How can the courts’ needs be potentially met by advancing the technology provided?</p>

V. CONCLUSION

In summary, the Dean’s Forum was replete with thoughtful discussions, respectful disagreements, and an overall tone of hopefulness for the future. The moments that resonated with each attendee and student were certainly distinct, but there was a uniform feeling of quiet optimism, tempered with some apprehension of the work that lies ahead.

We are tremendously grateful for the energy that was brought into the room during the Dean’s Forum, the voices that we heard from, and the respect and attention shown by every attendee. We look forward to seeing, and being part of, what is next in the evolution of the legal system in Saskatchewan.

Appendix A: Presentation Slides

**DEAN'S FORUM**
ON ACCESS TO JUSTICE AND DISPUTE RESOLUTION


Examining the Impact of Virtual Facilitation in SK


Reed Boychuk, Tasia Presber, Stephanie Pankiw, Liam McDonald, Robeah Saeed, Ciara Richardson
Facilitator: Brea Lowenberger


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Today's Agenda

1. The Problem
2. Terminology/ Methodology
3. Consultations- The Process and Principles
4. Levels of Court
5. Conclusions from Consultees
6. Predictive Framework
7. Key Takeaways

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**2020**
Pandemic hits: all of justice goes online

**2021**
Courts and other forums are now proficient online

**2022**
What do we do now?

The Problem:
How do we use our progress in technology post-pandemic to increase access to justice?

Key Questions:

- Do the courts reflect the society in which we now reside?
- Is the legal system inclusive or does it leave out vulnerable parties?
- Does the technological advancement in law reflect a “people first” approach?
- Has the safety, understanding, aptitude and agency of those utilizing the courts been considered?

Terminology

Virtual
Facilitation

- Using tech to deliver the ordinary functions of the justice system as they are

Digital
Transformation

- Using tech to transform the justice system beyond its ordinary functions

The Dean's Forum Process: Methodology

Research: CREATE Justice Survey, other jurisdictions, “cyber courts”

Consultation: Interview lawyers, judges, external stakeholders

Recommendation: Framework and Checklist

Who Did We Talk To?

- 19 Lawyers**
 - 13 appeared virtually at the Court of Appeal during COVID-19
 - Private practice, In-House Counsel, Legal Aid & Ministry of Justice
 - Primarily urban practitioners
- 8 Judges**
 - 4 from Court of Appeal
 - 2 from Court of Queen's Bench
 - 2 from Provincial Court
- 10 Justice Stakeholders**
 - These consultees work at a number of organizations including the Law Society of Saskatchewan, College of Law, CLASSIC, Ministry of Justice, Law Reform Commission of Saskatchewan


Consultations

Questions We Asked:

- successes/failures of virtual facilitation
- what could be improved to increase access to justice

The Principles:

Accessibility	Personal Impact	Human Competency
Cost	Legal Intricacy	Public Transparency

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The Principles:

Accessibility:

- Do the parties have access to the appropriate technology required to participate?
- Do the parties have a private physical space in which they can join the proceedings?
- Do the parties have reliable connectivity to participate successfully in the proceedings?

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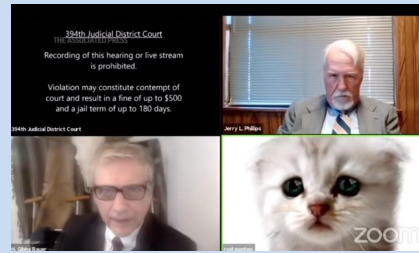
Human Competency

Do the parties understand how to use the proposed remote hearing technology?

Can training be made available to the parties in advance of the process?

Will the parties have access to technological support before and during the remote proceedings?

Does the process facilitator have a deep understanding of the proposed hearing technology?



Legal Intricacy

Are there witnesses involved in the matter?

- How many? What level of sophistication?
- Can their credibility be measured through the remote medium in question?
- Will they need to be cross-examined?
- Can a cross-examination be reasonably accommodated through the remote medium in question?

Is there evidence involved in the matter?

- What kind of evidence?
- Can the evidence be effectively presented through the remote medium in question?

Personal Impact

Personal impact speaks to the “humanity” component of the administration of justice

- How personal is the matter to the parties?
 - Are they being sentenced?
 - Is their sentence being extended?
- Will the parties feel safer appearing remotely?
 - Is this a domestic dispute/ is there domestic violence?
- Is confidentiality an issue/ is there adequate privacy?

Public Transparency

- Is public access to the process required?
- Can public access to the process be properly facilitated with the technology in question?

Cost

- If the proceedings were to take place in-person, what would the cost be, in time and money?
- If the proceedings were to take place remotely, what would the cost be, in time and money?
- Who gains the most from cost savings?

Levels of Court

Bringing Court Online

vs

Bringing School Online



English Class:
Assign readings,
zoom lectures

Low complexity
(Court of Appeal)

Science Class:
Assign readings, zoom
lectures, conduct
experiments online...?

High complexity
(Provincial Court)



Types of Matters	Family Law, Corporate Law, Labour Law, Human Rights Matters, Insurance Law, Property Law, Wills and Estates etc.
Court Processes:	-both closed and open court proceedings with justice present
Accessibility	-Litigants: lawyers are predominant litigants, all have access to computers equipped with video conferencing software -Witnesses, experts and/or jury are not present -clients not generally present or required to travel -some limitations for self-reps with reduced access to technology
Human Competency	-lawyers as litigants are generally competent in virtual facilitation of hearings -self-reps may find process more challenging
Legal Intricacy	-lawyers are sophisticated participants which allowed legal intricacies to be upheld -self-reps may pose challenges with communication of credibility, honesty, deference to the court, and transparency of the process
Public Transparency	-attending hearings is possible online, if the public enters the site to find the required link, not quite as transparent as in-person hearings
Personal Impact	-clients are not generally present -self-reps may not experience the same impact or "feelings of justification" as an in-person hearing
Cost	-low due to reduced travel costs and shorter hearings without witnesses or experts

Saskatchewan Court of Appeal

Types of Matters	Family Law, Corporate Law, Labour Law, Human Rights Matters, Insurance Law, Administrative Law etc. (few limitations save for criminal law, tribunals and appeals)
Court Processes	-Both open and closed court proceedings with judge, litigants, and/or witnesses and members of the public -complexity of virtual facilitation increases with number of participants and varies based on sophistication of participants
Accessibility	-Lawyers have easy access to technology with video requirements -Witnesses, self-reps, and experts may not have access to technology with video requirements, may be required to telephone in, accessibility does increase due to reduced travel costs and ability to participate in hearings from anywhere in the world
Human Competency	-lawyers are generally competent in virtual facilitation of hearings -witnesses, self-reps and experts may not be as competent with online hearings -participants are competent with the telephone
Legal Intricacy	-credibility, honesty and transparency are more difficult to evaluate in cross-examination online, issues may be present with communication and preserving confidentiality of the process -self-reps may experience increased difficulties with deference to court in a virtual forum
Public Transparency	-virtual facilitation is not as transparent as in-person hearings, bandwidth of video-conferencing software with many participants can be a concern
Personal Impact	-some personal elements lost in cross-examination; body language of judge, witnesses, opposing counsel is absent
Cost	-low due to reduced travel costs, but may increase duration of hearing due to technological difficulties and multiple participants

Saskatchewan Court of Queen's Bench

Types of Matters	Family Law, Criminal Law etc.
Court Processes	-Both open and closed court proceedings with judge, litigants, and/or witnesses and members of the public -complexity of online court proceedings increases with number of participants and varies based on sophistication of participants
Accessibility	-Lawyers have easy access to technology with video requirements -Witnesses and experts may not have access to technology with video requirements, may be required to telephone in, accessibility does increase due to reduced travel costs and ability to participate in hearings from anywhere -in-mates may appear virtually, some issues with technology and moving in-mates within the facility, preserving confidentiality of lawyer discussions -jury trials have largely been adjourned due to gathering restrictions, difficulty of multi-participant online trials, and limitations in legislation requiring in-person juries
Human Competency	-lawyers are generally competent in online hearings -witnesses, self-reps and experts may not be as competent with online hearings -participants are competent with the telephone
Legal Intricacy	-credibility, honesty and transparency are more difficult to evaluate in cross-examination online and through telephone, issues may be present with communication and preserving confidentiality of the process -individuals with English as a second language and self-reps may experience difficulties with understanding and respecting court in an online forum
Public Transparency	-virtual facilitation is not as transparent as in-person hearings, bandwidth of video-conferencing software with many participants can be a concern
Personal Impact	-some personal elements lost in cross-examination; body language of judge, witnesses, opposing counsel is absent -loss of substantial human element in criminal matters, especially sentencing
Cost	-low due to reduced travel costs, but may increase duration of hearing due to technological difficulties and multiple participants

Saskatchewan Provincial Court

Types of Matters	Administrative Law, Labour and Employment Law etc.
Processes	-closed proceedings with only participants and mediator present
Accessibility	-Parties generally have access to technology with video requirements -Witnesses and experts may not have access to technology with video requirements, may be required to telephone in, accessibility does increase due to reduced travel costs and ability to participate in mediation from anywhere
Human Competency	-parties are generally competent in virtual facilitations, depending on mediator's level of experience with the process online -witnesses and experts may not be as competent with online processes
Personal Impact	-some personal elements lost in bargaining or negotiating between parties with inability to evaluate body language of mediator, opposing parties
Cost	-low due to reduced travel costs, but may increase duration of process due to technological difficulties and multiple participants

Mediation in Saskatchewan

Types of Matters	Administrative Law, Labour and Employment Law etc.
Processes	-closed proceedings with only participants and mediator present
Accessibility	-Parties generally have access to technology with video requirements -Witnesses and experts may not have access to technology with video requirements, may be required to telephone in, accessibility does increase due to reduced travel costs and ability to participate in mediation from anywhere
Human Competency	-parties are generally competent in virtual facilitations, depending on mediator's level of experience with the process online -witnesses and experts may not be as competent with online processes
Personal Impact	-some personal elements lost in bargaining or negotiating between parties with inability to evaluate body language of mediator, opposing parties
Cost	-low due to reduced travel costs, but may increase duration of process due to technological difficulties and multiple participants

Tribunals in Saskatchewan

Conclusions From Consultations

As access to justice remains a crucial issue in our legal system, it must be acknowledged that technology is not and has never been the "silver bullet" solution to this ongoing problem.

Notes from Consultees

Courts should not make assumptions when it comes to litigants capacity to make appearances virtually

We must not lose the *personal aspect* of the practice of law as we allow more technology in

Senior lawyers must continue to be mentors for junior lawyers even when physically out of the office

Judges can be leaders; change comes from the top

We must remain cognizant of the fact that *online adjudication may not have the "teeth"* necessary to undertake certain cases where the issue of human rights is in question

There is a "push and pull" between access to justice, cost, and expediency. The right solutions will strike that balance

Applying the Principles: A Predictive Framework for Counsel

Threshold Considerations (the following considerations *must* be met to proceed with a remote process)

Accessibility

- ☐ Parties possess or have reliable access to teleconference/videoconference hardware (computer, microphone, speakers/headphones, webcam, telephone etc.)
- ☐ Parties possess or have reliable access to the necessary internet bandwidth or cellular connectivity required to connect to the proceedings
- ☐ Parties possess or have reliable access to a private physical space that is suitable for the proceedings

Human Competency

- ☐ Parties have demonstrated the technical competency necessary to access and fully participate in the proceedings
- ☐ Parties have been offered technical support and/or training prior to the proceedings
- ☐ Parties will have access to technical support throughout the proceedings

Applying the Principles: A Predictive Framework for Counsel

Balancing Considerations (the following considerations ought to be balanced to identify possible gains and losses from a remote process)

Legal Intricacy

Considerations in favour of a remote process	Considerations against a remote process
<ul style="list-style-type: none"> <input type="checkbox"/> The matter involves few, if any, witnesses <input type="checkbox"/> The witnesses involved are sophisticated and accustomed to testifying remotely <input type="checkbox"/> The credibility of witnesses is not central to the matter <input type="checkbox"/> The witnesses are not subject to extensive cross-examination <input type="checkbox"/> The matter involves little, if any, consideration of evidence <input type="checkbox"/> The evidence involved is largely written documentation and can be easily transmitted electronically 	<ul style="list-style-type: none"> <input type="checkbox"/> The matter involves a significant number of witnesses <input type="checkbox"/> The witnesses involved are unsophisticated and unaccustomed to testifying remotely <input type="checkbox"/> The credibility of witnesses is central to the matter <input type="checkbox"/> The witnesses will be subject to extensive cross-examination <input type="checkbox"/> The matter involves significant consideration of evidence <input type="checkbox"/> The evidence involved is complicated and cannot be easily transmitted electronically

Applying the Principles: A Predictive Framework for Counsel



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Personal Impact	
<i>Considerations in favour of a remote process</i>	<i>Considerations against a remote process</i>
<input type="checkbox"/> The matter is routine and has a low personal impact on the parties	<input type="checkbox"/> The matter is highly sensitive and personally important to the parties
<input type="checkbox"/> The parties will feel safer appearing remotely	<input type="checkbox"/> The solemnity of the process is important to fulfil the goal of recidivism
Public Transparency	
<i>Considerations in favour of a remote process</i>	<i>Considerations against a remote process</i>
<input type="checkbox"/> Public access to the process is not important or required	<input type="checkbox"/> Public access to the process is important or required
<input type="checkbox"/> Public access to the process can be facilitated by providing access to the remote proceedings	<input type="checkbox"/> Public access to the process cannot be easily facilitated by providing access to the remote proceedings
Final Consideration	
(here, the findings from the balancing consideration are compared to the potential expense or cost savings that come with a remote process)	
Cost	
<i>Considerations in favour of a remote process</i>	<i>Considerations against a remote process</i>
<input type="checkbox"/> Remote proceedings present significant cost savings for the parties involved	<input type="checkbox"/> Remote proceedings increase the cost of attending the process for the parties involved
	<input type="checkbox"/> One party stands to gain or lose significantly more than the others in proceeding remotely

Appendix B: Dean's Forum Agenda

The Tenth Annual Dean's Forum on Access to Justice and Dispute Resolution Thursday March 10, 2022

Education Student's Lounge (Room 1005) & College of Law (Denton's Student Lounge)

9:00–9:30	Registration and Coffee (Education, Room 1005)
9:30–10:15	Welcome and Introductions <i>Dean Martin Phillipson & Deputy Minister Glen Gardner, QC</i>
10:15–10:30	Morning Coffee Break
10:30–11:00	Presentation of the Policy Paper: Examining Virtual Facilitation of Legal Processes in Saskatchewan: An Exploratory Inquiry
11:00–11:45	Large Group Discussion: Gathering Feedback and Reactions to the Policy Paper
11:45–1:00	Lunch and Research Poster Competition (Law, Denton's Lounge) <i>View the College of Law and CREATE Justice 6th Annual Student Research Poster Competition and vote for your favourite poster.</i>
1:00–1:45	Small Group Break-out Exercise: Applying the Proposed Framework to Imagined Scenarios
1:45–2:20	Large Group Break-out Debrief: Sharing Scenario A Results and Moving the Framework Forward
2:20–2:35	Afternoon Coffee Break
2:35–3:10	Large Group Break-out Debrief: Sharing Scenario B Results and Moving the Framework Forward
3:10–3:50	Large Group Discussion: Navigating the Path Ahead
3:50–4:00	Closing Remarks <i>Dean Martin Phillipson & Deputy Minister Glen Gardner, QC</i>

Appendix C: Small Group Scenarios

Scenario A)

Your client Amal is a practicing Muslim. She was recently let go from her job because she had to take a significant amount of time off without warning to care for her daughter. Amal is a single parent who lost her husband due to illness several years ago. Amal's daughter is immunocompromised and suffers from chronic lung issues that frequently and easily develop into pneumonia. Amal asserts that she was eligible for parental leave. Her former boss is insistent that she qualified for some leave to deal with emergencies, but that she went beyond the "reasonable amount of unpaid time off," was "unreliable," and that the company had no choice but to fill her spot.

Both Amal and her boss have agreed to mediation as the company does not want to be sued and Amal is reticent surrounding the costs of a trial. Amal's mediation sessions (of which there were to be two) must take place online to protect Amal's immunocompromised child from COVID-19.

Amal follows the Salah, or basic tenets of prayer. She prays each day, five times a day, and each time it takes between five and ten minutes. Amal also has a copy of the Quran in her office behind her that is visible during Zoom meetings. The copy of the Quran is highlighted in the room because of its size and because it is placed on a stand so that she can more easily read it.

During the first mediation, Amal had to excuse herself once to pray. She turned her camera off and returned within seven minutes. Amal's former boss made a complaint to the through his counsel, saying that the presence of the Quran was "distracting" and that her leaving to pray was "unprofessional" and "raised questions about who else may be present for the mediation." *Using our framework and practice checklist, please come up with a process solution.*

Discussion Questions:

1. *In considering the framework that we have laid out, is the online process a barrier to achieving true justice or a hindrance? For example, is this a "people first" approach?*
2. *Does this scenario demonstrate accessibility for the vulnerable party?*
3. *Did the online process fail to protect the most vulnerable party in this case?*
4. *One of the key elements of our research surrounded the protection of vulnerable parties when moving forward with technological advancements in the legal system; how would you, as the lawyer or mediator ensure that the integrity and respect of your client is being maintained in a situation like this?*

Scenario B)

John Doe lives on a reserve in Nova Scotia. He makes his livelihood from fishing, which his ancestors have done for years. One day, while fishing, John had a good day and caught a lot of lobster. After putting aside enough for his family and his community, he had 15 lobsters left over. The community recommends that he sell the lobsters to make some extra cash. As he was selling the lobsters, the other sellers felt uncomfortable with him being there because he was not a usual seller. So, they called an officer to come check if John was legally allowed to be selling lobsters. The officer asked for John's commercial fishing licence. John expressed that he has a treaty right to hunt, fish, and gather and that the Mi'kmaw band has had a self-regulated lobster fishery since September 2020. However, the officer explained that according to the Fish Buyers' Licensing and Enforcement Regulations under the N.S. *Fisheries and Coastal Resources Act*, John was prohibited from selling unless he held a valid commercial fishing licence issued by Fisheries and Oceans Canada. John ended up getting fined and suspended from fishing.

You have taken John Doe as your client. Only about 10% of Nova Scotian homes and businesses have access to high-speed internet. Due to COVID-19 and John living in Nova Scotia, you have been meeting through remote processes. You have noticed that John's video keeps freezing and that he keeps cutting out during your meetings and consultations. You also notice that he uses his cellphone to join your meetings. His court date has been scheduled and it will take place through WebEx. You are a bit concerned about John's court date being scheduled online as you have noticed he has some connection issues. You are worried that the Court might view him as "unprofessional" or that he will not be able to make an effective case because there is a high chance he might cut out or freeze during his testimony. You have a discussion with him regarding the issues and the effects it might have during his court date. He explains that there is not much he can do to fix it since he lives on a remote reserve, and he cannot afford or access high-speed internet. He further explains that this is an issue throughout his reserve, so there is no place for him to go to access high-speed internet or a laptop. *Using our framework and practice checklist, please come up with a process solution.*

Discussion Questions:

1. *Is the online process a barrier to accessibility or a hindrance?*
2. *Have you come across anything in your work in the legal system that would be helpful in cases like these?*
3. *In considering human competency and the evolution of technology; should exceptions be made for those who cannot control the circumstances surrounding their access to technology?*
4. *In your experience, has the increased implementation of technology in the justice sector created more barriers than benefits for Indigenous peoples?*