

**CANADIAN  
DEFENCE  
LAWYERS**

April 3, 2023

VIA EMAIL: [rosemarie.juginovic@ontario.ca](mailto:rosemarie.juginovic@ontario.ca)

Office of the Chief Justice  
Ontario Superior Court of Justice

Attn: Rosemarie Juginovic  
Senior Criminal Counsel

**RE: Ontario Superior Court Guidelines to Determine Mode of Proceeding in Civil Actions  
Response to Call for Input – Canadian Defence Lawyers**

Canadian Defence Lawyers (CDL) is grateful for the opportunity to respond to the Call for Input issued by the Office of the Chief Justice of the Ontario Superior Court regarding the presumptive method of hearings in civil actions. As our membership base deals exclusively with civil actions, we have restricted our comments to the civil framework.

Founded in 1996, CDL is a national bar association with members from coast to coast. We are the voice of the Canadian civil defence bar, drawing from the experience of trial and appellate counsel appearing on behalf of insurers, insured defendants, corporations, and institutional litigants.

In preparation of this response, CDL canvassed its Ontario members through a province-wide survey. CDL received 99 individual responses to the survey. The survey and follow-up communications obtained provides a summary of our membership's position on the presumptive manner of hearing for civil matters. We have set out in Appendix "A" attached a summary of the responses received.

The data obtained by the CDL through its membership survey identifies significant consensus that the following matters should proceed presumptively **virtually**:

- Case conferences
- Pretrial conferences involving trial management and scheduling issues only
- Trial and motion scheduling court
- Assessment hearings

The data obtained also identifies a clear consensus that the following matters should remain presumptively **in-person**:

- Judge alone trials
- Jury trials

The data obtained identifies the following areas where there is **no clear consensus** on the preferred presumption for the method of hearing:

- Pretrial conferences involving settlement issues (approx. 67%/33% in favour of virtual)
- Contested motions and applications (approx. 57%/43% in favour of virtual)
- Examinations for Discovery (approx. 60%/40% in favour of virtual)
- Mandatory mediation (approx. 65%/35% in favour of virtual)
- Appeals to the Divisional Court and applications for Judicial Review (approx. 70%/30% in favour of in-person)

In favour of virtual hearings, the membership raised the following key points:

- Access to justice – more affordable
- Moves more expeditiously
- Scheduling is far easier
- Virtual keeps everyone on time
- Environmentally it is better due to less travel
- Significant savings of resources for litigants
- Eliminates physical barriers for those who have physical challenges
- Meant to address short procedural matters
- Safety measure for those concerned with covid or have compromised immune systems

In favour of presumption of in-person hearings, the membership raised the following key points:

- More is accomplished in person
- Greater chance of meaningful discussion or settlement
- Trials (both Judge and Jury) must remain in person
- Viva voce evidence is best assessed in person

With respect to discoveries and mediation specifically, a number of our members raised the comment that no presumption is required, and that counsel can determine the appropriate manner of proceeding.

CDL as an organization supports the efforts of the Office of the Chief Justice in its review of the presumptive manner of hearings in Ontario civil actions. CDL is committed to its ongoing role as a key stakeholder in these initiatives and would like to thank the Office of the Chief Justice for the opportunity to provide its input on behalf of its membership.

If you require any further information or clarification on the information contained within this response, please do not hesitate to contact us.

Yours very truly,



Andrea R. Lim

President  
Canadian Defence Lawyers

**Canadian Defence Lawyer's Subcommittee on Guidelines to Determine Mode of Proceeding in Civil Actions:**

John Lea, Aviva Trial Lawyers

Debbie Orth, Bertschi Orth Solicitors and Barristers LLP

Brett Rideout, Rideout Law

## APPENDIX "A"

### Responses to CDL Questionnaire re Presumptive Manner of Hearing in Civil Actions

- 1. Should case conferences remain presumptively virtual?**

96.97% of the respondents answered "Yes"

3.03% of the respondents answered "No"
- 2. Should case conferences now be presumptively in-person?**

3.03% of the respondents answered "Yes"

96.97% of the respondents answered "No"
- 3. Should pre-trial conferences involving trial management and scheduling issues only remain presumptively virtual?**

94.4% of the respondents answered "Yes"

5.10% of the respondents answered "No"
- 4. Should pre-trial conferences involving trial management and scheduling issues only now be presumptively in-person?**

6.19% of the respondents answered "Yes"

93.81% of respondents answered "No"
- 5. Should pre-trial conferences involving settlement and trial management issues remain presumptively virtual?**

68.69% of the respondents answered "Yes"

31.31% of the respondents answered "No"
- 6. Should pre-trial conferences involving settlement and trial management issues now be presumptively in-person?**

33.67% of the respondents answered "Yes"

66.33% of the respondents answered "No"
- 7. Should trial and motion scheduling court remain presumptively virtual?**

95.92% of the respondents answered "Yes"

4.08% of the respondents answered "No"
- 8. Should trial and motion scheduling court now be presumptively in-person?**

4.08% of the respondents answered "Yes"

95.92% of the respondents answered "No"

- 9. Should contested motions and applications remain presumptively virtual?**  
57.14% of the respondents answered “Yes”  
42.86% of the respondents answered “No”
- 10. Should contested motions and applications now be presumptively in-person?**  
41.84% of the respondents answered “Yes”  
58.16% of the respondents answered “No”
- 11. Should assessment hearings remain presumptively virtual?**  
86.17% of the respondents answered “Yes”  
13.83% of the respondents answered “No”
- 12. Should assessment hearings now be presumptively in-person?**  
14.74% of the respondents answered “Yes”  
85.26% of the respondents answered “No”
- 13. Should examinations for discovery remain presumptively in-person?**  
36.73% of the respondents answered “Yes”  
63.27% of the respondents answered “No”
- 14. Should examinations for discovery now be presumptively virtual?**  
58.16% of the respondents answered “Yes”  
41.84% of the respondents answered “No”
- 15. Should mandatory mediations remain presumptively in-person?**  
33.67% of the respondents answered “Yes”  
66.33% of the respondents answered “No”
- 16. Should mandatory mediations now be presumptively virtual?**  
64.29% of the respondents answered “Yes”  
35.71% of the respondents answered “No”
- 17. Should Judge alone trials remain presumptively in-person?**  
81.44% of the respondents answered “Yes”  
18.56% of the respondents answered “No”
- 18. Should Judge alone trials now be presumptively virtual?**  
17.53% of the respondents answered “Yes”

82.47% of the respondents answered “No”

**19. Should jury trials remain presumptively in-person?**

93.81% of the respondents answered “Yes”

6.19% of the respondents answered “No”

**20. Should jury trials now be presumptively virtual?**

7.29% of the respondents answered “Yes”

92.17% of the respondents answered “No”

**21. Should appeals to the Divisional Court and applications for judicial review remain presumptively in-person?**

67.35% of the respondents answered “Yes”

32.65% of the respondents answered “No”

**22. Should appeals to the Divisional Court and applications for judicial review now be presumptively virtual?**

29.59% of the respondents answered “Yes”

70.41% of the respondents answered “No”