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The Courts on COVID Remote Hearings are Here to Stay

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In two recent endorsements, the Superior Court of Justice sent a clear message to litigators to embrace technology as part of the civil justice system's new normal.

Arconti v. Smith

In a case conference endorsement for the matter [Arconti v. Smith, 2020 ONSC 2782](#), Justice Myers rejected the plaintiffs' request to delay proceedings until the end of social distancing requirements rather than conduct remote examinations for discovery.

In ordering the parties to conduct examinations by videoconference, Justice Myers wrote, "[i]t's 2020'. We no longer record evidence using quill and ink...[w]e now have the technological ability to communicate remotely effectively."¹

Although the importance of remote technology has recently become a live issue in the wake COVID-19, Justice Myers noted that for over 20 years, Rule 1.08 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 has provided for the option of videoconferencing in motions, applications, and trials.² In his view, technology use must continue in a post-COVID world. "[I]t is more efficient and far less costly than personal attendance," Justice Myers wrote, "[w]e should not be going back."³

¹ *Arconti v. Smith*, 2020 ONSC 2782 at [para 19](#).

² *Ibid* at paras [21-23](#).

³ *Ibid* at paras [19](#), [33](#).

Bevan v. Varcoe

The use of technology in civil litigation becomes more complicated in matters involving self-represented litigants, who may not have access to or training in the same remote tools as counsel.

However, [*Bevan v. Varcoe, 2020 ONSC 2844*](#) suggests that the use of technology may still be possible where one party is a self-represented litigant. In that case, the applicant represented herself, while the respondent was represented by counsel.

In a case management endorsement regarding a motion for leave to appeal, Justice Corbett of the Divisional Court directed counsel for the respondent to establish a password-protected, download-only Dropbox from which the courts could access the parties' motion materials. Respondent's counsel was directed to assist the applicant by converting her materials into an electronic format and uploading them to the Dropbox. Justice Corbett also noted in his endorsement that respondent's counsel had offered to assist the applicant with any technical issues.

Justice Corbett's endorsement demonstrates that counsel is expected to take the lead in facilitating the use of technology where there are self-represented litigants so that remote hearings can still take place. This is consistent with Justice Myers' endorsement, which characterizes the use of readily available technology as "part of the basic skillset required of civil litigators and courts."

The bottom line – remote hearings are here to stay, and counsel needs to do their best to embrace the technology to facilitate them.