

Tribunals shift to Zoom, but some manage better than others

Virtual hearings are widespread, but a disparity has emerged on which tribunals were better prepared



Paul Aterman is the chairman of the Social Security Tribunal of Canada.

By [Tim Wilbur](#)

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Administrative law practitioners say they are settling into a new landscape of virtual trials and Zoom calls as they work to have their clients' disputes settled, but the pandemic has also highlighted the disparity in responsiveness for tribunals across the country.

The tribunals that have managed the best, say administrators and practitioners, are those with a culture focused on the end user or with less bureaucratic restrictions.

“There’s not a lot which, from a technological point of view, is actually stopping tribunals and courts from proceeding but it’s more sort of culture,” says Paul Aterman, chairman of the Social Security Tribunal of Canada. “That’s what I think constrained some adjudicative institutions.

“We’ve been trying to move the [SSTC] to a client centric focus well before the pandemic. I think it helped us in the pandemic, because the members and the staff have an attitude, which is, ‘it’s not about us, it’s about the people who use the system.’”

Aterman says that the SSTC held 1,706 hearings in the four months before the pandemic and 1,557 in the four months since the pandemic began.

“The bottom line is, you know, we’ve been able to maintain our operations.”

Several tribunals have approached the SSTC about how to improve their processes, especially provincial tribunals that have been “more responsive” and nimble.

This is not so much the case for federal tribunals, Aterman says. “Pressure from the outside is probably going to be the most effective impetus to making tribunals more effective. I don’t think it’s adequate to expect that they just do it themselves, because so far that hasn’t really happened.”

“The technology is there, it’s just that the federal government is a big, heavy monster and sometimes it takes a little while to be able to integrate it into our daily operations,” says Nathalie Théberge, who in addition to acting as vice chairwoman and CEO of the Copyright Board of Canada is also the vice chairwoman of the Council of Federal Tribunal Chairs.

“I think many of us were already getting ready for the big e-transition. This was just a nudge that we perhaps needed to move at a another at another speed,” she says.

“In my personal case, Restaurants Canada, the Hotel Association of Canada, these are stakeholders that we deal with on a very regular basis. And they asked for flexibility, which we felt absolutely compelled to agree to, just because they were going through hell.”

Luc Bélanger, who acts as chairman of the CFTC and the Canada Agricultural Review Tribunal, says tribunal chairs have a lot of flexibility within their role to manage files. “Everybody has been inclined so far to really make sure that we don’t breach any rules of natural justice, that we are equitable, efficient and mostly flexible to address the needs of the parties in our files.”

Clifford Hart, a labour and employment lawyer at Borden Ladner Gervais LLP, who regularly appears before the Ontario Labour Relations Board, says all arbitrators have now moved to remote hearings.

“Nothing replaces a live hearing,” Hart says, “but I found that a Zoom labour arbitration is doable and OK.”

Hart, who represents management, says that the “Brady bunch” approach to Zoom meetings means he can now see his opposing counsel while he delivers submissions, whereas his

sole focus was on the adjudicator when proceedings were in person.

“When I was doing my opening statements about a safety infraction, I could actually see the union folks who are nodding in agreement, which normally I wouldn’t capture.”

Jonathan Coady, who practises administrative and public law at Stewart McKelvey in Prince Edward Island, says in-person hearings are starting up again in his province, but he sees a long-term benefit to the shift to virtual hearings.

“Virtual hearings by conference have been held by the Island Regulatory and Appeals Commission. Also, tribunals like IRAC have introduced to changes to their rules of procedure to better facilitate virtual hearings,” says Coady. “Just from the perspective of trying to modernize our administrative processes, I think those amendments are positive ones.”

Jennifer Khurana, vice chairwoman of the Canadian Human Rights Tribunal and chairwoman of the Council of Canadian Administrative Tribunals, hopes that the pandemic does mean administrative tribunals make lasting changes.

“This whole moment has been . . . a catalyst for all of us in the judicial world, in the admin tribunal world to take a close look at how we deliver these services to Canadians. . . . What's going to make this better is by looking outward to those we serve and making this more . . . focused on users and not what's convenient for our systems.”