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## Multi-Functional Access to Justice Centres

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Résumé de l'article

Ces dernières années, l'intégration de techniques numériques au sein du système judiciaire canadien s'est accélérée, mue à la fois par les progrès de la technologie et par les besoins urgents mis en lumière par la pandémie de COVID-19. Cet article analyse le potentiel transformateur de la justice numérique au sein des tribunaux canadiens, en mettant l'accent sur une proposition visant à transformer les installations des tribunaux itinérants en « centres d'accès à la justice » [CAJ]. Ces centres visent à répondre aux problèmes actuels d'accès à la justice en offrant des interfaces numériques à la fine pointe de la technologie et en centralisant les fonctions judiciaires, tout en préservant la dignité et le décorum des instances tenues en personne. Notre analyse évalue les succès et les défis des techniques numériques au sein des processus judiciaires, à la lumière de recherches empiriques menées auprès de juges canadiens. Les conclusions donnent à penser que même si les outils numériques ont rehaussé l'efficacité du système judiciaire et l'accès à la justice, il subsiste d'importantes inégalités, notamment chez les collectivités marginalisées. En prenant appui sur des principes de conception axée sur les utilisateurs et sur l'infrastructure existante, les CAJ pourraient offrir des solutions innovatrices qui combleraient ces lacunes, garantissant ainsi que la justice numérique bénéficierait à tous les secteurs de la société. Cet article contribue au dialogue en cours sur la réforme judiciaire, en soulignant la nécessité d'intégrer la technologie de manière réfléchie et inclusive dans l'administration de la justice.

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## Multi-Functional Access to Justice Centres

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*In recent years, the integration of digital technology into the Canadian judicial system has accelerated, driven by both technological advancements and the urgent needs highlighted by the COVID-19 pandemic. This article explores the transformative potential of digital justice within Canadian courts, focusing on a proposal to repurpose circuit court facilities as "Access to Justice Centres" [AJCs]. These centers aim to address existing access to justice issues by providing state-of-the-art digital interfaces and centralizing court functions while preserving the dignity and decorum of in-person proceedings. Our analysis evaluates the successes and challenges of digital technologies in judicial processes, informed by empirical research with Canadian judges. The findings suggest that while digital tools have enhanced judicial efficiency and access to justice, significant disparities remain, particularly for marginalized communities. By leveraging user-centric design principles and existing infrastructure, AJCs could offer innovative solutions to bridge these gaps, ensuring that digital justice benefits all sectors of society. This article contributes to the ongoing dialogue on judicial reform, emphasizing the need for a thoughtful and inclusive approach to integrating technology in the administration of justice.*

*Ces dernières années, l'intégration de techniques numériques au sein du système judiciaire canadien s'est accélérée, mue à la fois par les progrès de la technologie et par les besoins urgents mis en lumière par la pandémie de COVID-19. Cet article analyse le potentiel transformateur de la justice numérique au sein des tribunaux canadiens, en mettant l'accent sur une proposition visant à transformer les installations des tribunaux itinérants en « centres d'accès à la justice » [CAJ]. Ces centres visent à répondre aux problèmes actuels d'accès à la justice en offrant des interfaces numériques à la fine pointe de la technologie et en centralisant les fonctions judiciaires, tout en préservant la dignité et le decorum des instances tenues en personne. Notre analyse évalue les succès et les défis des techniques numériques au sein des processus judiciaires, à la lumière de recherches*

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## I. INTRODUCTION

In recent years, the integration of digital technology into the judicial system has been accelerated by both technological advancements and the imperative needs highlighted by the COVID-19 pandemic. Emergencies are not conducive to optimal innovations.<sup>1</sup> This article examines the transformative potential of digital justice within Canadian courts, focusing on a novel proposal to repurpose circuit court facilities as multi-functional “access to justice centres” [AJCs]. By assessing how these technologies have addressed or exacerbated existing access to justice issues, we aim to provide a comprehensive overview that informs future developments in judicial processes and policy implementations. This analysis seeks not only to evaluate the successes and ongoing challenges but also to offer actionable solutions that could significantly enhance the delivery of justice in an increasingly digital landscape. As Richard Susskind notes:

Remember that the current system is not an evidence-based option that we have consciously chosen. It is simply where we are. We can choose to be elsewhere. I recognise that such a choice can take judges out of their comfort zones and lawyers out of their profit zones. But our focus should be on the needs of court users rather than the comfort of the providers.<sup>2</sup>

We use the term “digital justice” as shorthand for all manner of court, tribunal, or other dispute resolution operations that may be carried out in whole or in part using digital technologies of all types. To an extent, we “turn the tables” on the received wisdom that digital justice primarily benefits litigants by allowing them to attend court and other proceedings virtually.

Our proposal to put circuit courts to better use as AJCs would see litigants attending local venues in-person at which judges and other dispute resolvers would attend virtually. Several benefits may be realized by such an approach, including preserving the dignity and decorum of court proceedings, providing the public with state-of-the-art interfaces to digital justice services, savings on the judicial travel budget, and centralizing all core court functions. Accordingly, we step back from the hype surrounding digital justice and suggest a method to plan for a new era in the administration of justice using the best design principles without the pressure of providing immediate solutions.

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<sup>1</sup> As Richard Susskind puts it: “We are at the foothills of the transformation in court services. The current array of remote courts are a valiant collection of *ad hoc* services but much work and investment will be needed to industrialise these efforts, to build court capabilities that are scalable, stable, and, crucially, designed for use as much by law people as by lawyers.” Susskind, Richard, *Online Courts and the Future of Justice*, Paperback ed (Oxford University Press, 2021) at xxvii.

<sup>2</sup> *Ibid* at 1.

In part II the article outlines the contemporary understanding of the interplay between digital justice, user-centred justice, and access to justice. Here we propose there exists a practical and conceptual gap between the needs of justice system users and justice system design. In part III we then detail our proposal for AJCs and how they address this gap. In part IV we describe the “judges and technology survey” and present our key findings and responses. Finally, in part V we round out our idea of AJCs to address broader and systemic issues with the traditional forms of justice by filling gaps to leverage existing infrastructure combined with the best practices and user-centric design of online dispute resolution [ODR].

The COVID-19 pandemic imposed significant challenges on the administration of justice in Canada, but it also had the effect of elevating the technological capacities of Canadian courts and judges. As governments at every level, and in all parts of the country, accepted the need to provide remote access to government services, the message was heard that courts were an essential public service. This message was responded to with rapidly increased investment in courts’ technology infrastructure and support for their online operations. At the same time, the public’s capacity to effectively access online judicial services varied widely, and there was no corresponding investment in improving public access to the courts. Due to this disparity, as before the pandemic, many remote and rural citizens continue to suffer from a lack of access to justice while urban dwellers, larger businesses, and law firms with advanced technological capacity benefitted from the provision of online courts.

These trends were explored through empirical research with Canadian judges using a digital survey developed by an international research project. The research was supported by our research partner, the Canadian Institute for the Administration of Justice [CIAJ], a leading provider of judicial education and networking in Canada. The responses and comments of Canadian judges described below informed the proposal presented in this article.

The advent of the COVID-19 pandemic inserted a new and urgent issue into the access to justice crisis: physical access and use of the judicial system.<sup>3</sup> In response to this issue, pre-existing remote access measures were widely employed and the Canadian justice system developed or adopted new methods, procedures, and practices.<sup>4</sup> The widespread use of remote technologies was heralded by many as a “revolution” that thrust the hitherto reticent legal system into relying on these technologies to serve its public function.<sup>5</sup> Beyond resolving the issue of physical access to courts, many have argued that the pervasive and innovative use of technologies can solve other access to justice issues.<sup>6</sup> However, their effect upon the pre-existing barriers is not altogether known, with technology in some instances alleviating problems while simultaneously exacerbating others.<sup>7</sup>

Thus, there is an ongoing debate on whether technology improves access to justice. On the one hand, the pandemic demonstrated that using digital tools allows the justice system to continue to function by granting people remote access to services that were previously mostly in-person. However, there is little research done in Canada measuring the effect that digital tools adopted by the courts, such as remote

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<sup>3</sup> We note however the physical barriers presented to people with physical disabilities that exist prior to the pandemic.

<sup>4</sup> Canadian Bar Association, “No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19” (2021) at 8-10, online: <[https://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/Publications%20And%20Resources/2021/CBATaskForce.pdf](https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/Publications%20And%20Resources/2021/CBATaskForce.pdf)> [“No Turning Back”].

<sup>5</sup> See e.g. Canada, Department of Justice, “Annex B: Use of Technology in Canadian Courts during Covid-19 Media Scan” (2022), online: <<https://www.justice.gc.ca/eng/rp-pr/jr/utfjsab-utsjfb/annexb.html>>.

<sup>6</sup> Lisa Moore & Mitchell Perlmutter, “Public Spending on Access to Justice: Where do we go from Here?” in Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 69 at 73-74.

<sup>7</sup> See “No Turning Back”, *supra* note 4 at 9.

hearings and e-filing, have on the long-standing issues that make legal recourse inaccessible to the public.<sup>8</sup> While the pandemic-era tools addressed immediate issues, such as physical presence, the fundamental economic and social impediments towards dispute resolution remain largely unchanged. What, therefore, is the role of technology when it comes to devising better systems for the public to use law to solve problems? What methodology ought justice hubs or portals be modelled after so that technology solves old problems without creating new ones?

Over the past three decades, a great deal of work was undertaken in Canada and abroad to research the causes, costs, and consequences of the access to justice crisis.<sup>9</sup> What emerged from this body of work is an evolving definition of “access to justice”. Prominent amongst these developments is the focus on a “user-centric” justice system.<sup>10</sup> “User-centric” legal processes seek to facilitate the resolution of a problem in a way that is proportionate to the needs of the justice system user. Research suggests that legal processes ought to be made user-centric in and of themselves instead of being “supplemented” with user-centric features by grafting technology onto extant processes.<sup>11</sup> Taken together, leveraging digital tools to create justice processes for people to resolve their problems must be done in a manner that is fair, secure, effective, and proportionate to the public’s needs. For digital technology to meaningfully impact the ability of the public to use legal forums to solve problems, digital tools ought to be developed alongside, and integrated into, law reform. This is in contrast to the current practice exercised by jurisdictions of identifying digital tools they would like to use first, and reforming law to integrate that technology.

While the promise of technology to revolutionize justice is acknowledged, understanding its impact requires a review of existing research. In the following literature review, we delve into studies that have explored this intersection, identifying where gaps remain that this article aims to address. We then outline the problems caused by access to justice issues, followed by a discussion of a user-centric approach to access to justice. Subsequently, we will detail how digital tools can be used to complement this approach through a transformation of current circuit courts. Before we conclude, we explore the experiences of Canadian judges with digital justice, and their attitudes towards it, for its compatibility with this approach.

<sup>8</sup> Suzanne E Chiodo, “Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?” (2021) 57:3 Osgoode Hall LJ 801 at 826.

<sup>9</sup> See e.g. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013), online: <[https://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](https://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)>; Canadian Bar Association, “Canada’s Crisis in Access to Justice” (2006), online: <<https://www.cba.org/CMSPages/GetFile.aspx?guid=f7f0c61e-93df-4e36-98fa-b94d6446c2da>>; Canadian Bar Association, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, November 2013) at 11, online: <[https://www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](https://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf)>; Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada” (Canadian Forum on Civil Justice, 2016); Michael J Trebilcock, , Anthony Duggan & Lorne Sossin, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012); Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: the Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020).

<sup>10</sup> See Trevor CW Farrow, “What is Access to Justice?” (2014) 51:3 Osgoode Hall LJ 957.

<sup>11</sup> See Chiodo, *supra* note 8 at 828; Susskind, *supra* note 1 at 63.

## II. INTERPLAY BETWEEN DIGITAL JUSTICE, USER-CENTRED JUSTICE, AND ACCESS TO JUSTICE

### A. The Evolving Landscape of Digital Justice

The rapid evolution of technology has ushered in a new era of digital justice, transforming the way legal services are accessed and delivered. While the potential benefits of technology in enhancing access to justice are widely acknowledged, there remains a critical need for empirical research to fully understand its impact on court users and proceedings. Bailey and Burkell, in their comprehensive review of the digitization of court processes in Canada, emphasize the importance of empirical evidence in assessing the effectiveness of technology in improving access to justice.<sup>12</sup> Similarly, Draeger highlights the scarcity of empirical studies examining the actual impact of digital technologies on access to justice, particularly for marginalized and vulnerable populations.<sup>13</sup> This gap in the literature underscores the importance of conducting rigorous research to evaluate the effectiveness of digital justice initiatives and to understand their impact on different user groups.

The shift towards digital justice has also brought about new challenges, particularly in the context of remote hearings. Byrom, Beardon, and Kendrick raise concerns about the potential for remote hearings to exacerbate existing access to justice barriers, especially for vulnerable individuals and those with limited digital literacy.<sup>14</sup> They argue that the absence of physical presence in virtual hearings can create challenges for individuals who are not familiar with technology or who lack access to reliable internet connectivity.<sup>15</sup> This concern is echoed by Schmitz, who emphasizes the need for a redefinition of access to justice in the digital age, one that takes into account the challenges and implications of the digital divide.<sup>16</sup>

To ensure that digital justice solutions are truly accessible and effective, user-centric design principles must be at the forefront. Kulp and Schmitz advocate for a user-centered approach to the design and implementation of digital justice solutions, emphasizing the importance of involving stakeholders throughout the process.<sup>17</sup> They argue that continuous feedback mechanisms are crucial for refining digital justice systems based on user experiences and ensuring that technology serves the needs of all users, regardless of their technological proficiency or socioeconomic background.<sup>18</sup> Salyzyn and Stroud further emphasize the importance of considering user needs and the digital divide when designing and implementing digital justice solutions, highlighting the need for accessible and inclusive design that caters to diverse user groups.<sup>19</sup>

### B. The Promise and Challenges of Virtual Courts

Virtual courts, characterized by the use of technology to conduct legal proceedings remotely, have emerged as a prominent feature of the digital justice landscape. While virtual courts offer the promise of

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<sup>12</sup> Jane Bailey & Jacquelyn Burkell, “Implementing Technology in the Justice Sector: A Canadian Perspective” (2013) 11:2 CJLT 254 at 277-280.

<sup>13</sup> Dennis Draeger, *Justice Trends 2: Automated Justice Get the Gist of the Future for Technology in Justice* (Ottawa: Department of Justice Canada, 2018) at 18-21.

<sup>14</sup> Natalie Byrom, Sarah Beardon & Abby Kendrick, *The Impact of COVID-19 Measures on the Civil Justice System* (United Kingdom: Civil Justice Council, 2020) at 5.

<sup>15</sup> *Ibid* at 60-65.

<sup>16</sup> Amy Schmitz, “Measuring ‘Access to Justice’ in the Rush to Digitize” (2020) 88:6 Fordham L Rev 2381.

<sup>17</sup> Heather Kulp & Amy Schmitz, “Real Feedback from Real People: Emphasizing User-Centric Designs for Court ODR” (2020) 26:2 Dispute Resolution Magazine 6.

<sup>18</sup> *Ibid* at 11.

<sup>19</sup> Amy Salyzyn & Shannon Stroud, “Direct-to-Public Digital Legal Tools in Canada: A 2023 Update” (2023) at 6, online: <<https://ssrn.com/abstract=4880902>>.

increased flexibility, convenience, and efficiency, they also present unique challenges that need to be carefully addressed. Puddister and Small caution that virtual courts, while offering increased flexibility and convenience, can also create new barriers to access to justice, particularly for marginalized and vulnerable populations.<sup>20</sup> They highlight the importance of addressing technological, procedural, and access barriers to ensure fairness and access to justice in the context of virtual hearings.<sup>21</sup>

One of the key challenges of virtual courts lies in the potential loss of non-verbal communication cues. Denault and Patterson underscore the importance of non-verbal cues for credibility and understanding in legal proceedings and discuss how the absence of physical presence can hinder the accurate interpretation and communication of these cues.<sup>22</sup> They argue that the loss of subtle non-verbal cues, such as facial expressions and body language, can have significant implications for procedural fairness and access to justice, particularly in cases where credibility is a central issue.<sup>23</sup>

The integration of technology into the justice system, including the adoption of virtual courts, should be guided by the principle of “technology follows law.” This principle, reinforced in principle by Chiodo, emphasizes that technology should serve to support and enhance a redesigned, user-centric legal system, rather than simply being grafted onto existing processes.<sup>24</sup> Simply digitizing existing processes without fundamentally changing the system will not address the underlying issues of cost, complexity, and accessibility that hinder access to justice.<sup>25</sup>

### C. The Canadian Experience with Digital Justice

The COVID-19 pandemic served as a catalyst for the accelerated adoption of digital tools and virtual proceedings in Canadian courts. Philp provides a comprehensive overview of the Canadian experience with digital justice during the pandemic, highlighting both the successes and challenges of this rapid transition.<sup>26</sup> While the adoption of virtual hearings and other digital tools has led to some improvements in efficiency and access to justice, it has also exposed the limitations of simply digitizing existing processes without addressing the underlying systemic issues.

The shift to virtual court has also exacerbated the digital divide, creating disparities between those who have access to reliable technology and internet connectivity and those who do not. Philp emphasizes that this digital divide disproportionately affects marginalized and vulnerable populations, who are more likely to lack access to the necessary technology and digital literacy skills to effectively engage with the virtual justice system.<sup>27</sup>

To ensure that the integration of technology into the Canadian justice system is truly effective and equitable, a holistic approach is needed. Philp also argues that this approach must consider the needs of

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<sup>20</sup> Kate Puddister & Tamara Small, “Trial by Zoom? The Response to COVID-19 by Canada's Courts” (2020) 53 Can J Pol Sci 373 at 373-374.

<sup>21</sup> *Ibid* at 374.

<sup>22</sup> Vincent Denault & Miles Patterson, “Justice and Nonverbal Communication in a Post-pandemic World: An Evidence-Based Commentary and Cautionary Statement for Lawyers and Judges” (2021) 45:1 J Nonverbal Behavior 1 at 6.

<sup>23</sup> *Ibid* at 5.

<sup>24</sup> Chiodo, *supra* note 8.

<sup>25</sup> *Ibid* at 828.

<sup>26</sup> George Philp, *Listening and Responding to the Future of Virtual Court: A Report on the Future of Virtual Courts in Canada* (2022), online: Nova Scotia Court of Appeal <[https://www.courts.ns.ca/sites/default/files/editor-uploads/Virtual%20Court/Listening\\_and\\_Responding\\_to\\_the\\_Future\\_of\\_Virtual\\_Court\\_2022\\_Cowan\\_Report\\_redacted.pdf](https://www.courts.ns.ca/sites/default/files/editor-uploads/Virtual%20Court/Listening_and_Responding_to_the_Future_of_Virtual_Court_2022_Cowan_Report_redacted.pdf)>

<sup>27</sup> *Ibid* at 91.

all users, including those who may face barriers to technology access or digital literacy.<sup>28</sup> It requires a commitment to ongoing evaluation and refinement of digital justice initiatives to ensure that they are meeting their intended goals and not creating new barriers to justice.<sup>29</sup>

#### D. Rethinking Access to Justice: A User-Centric Approach

Access to justice is more than simply providing legal representation. It's about empowering individuals to understand and resolve their legal issues. This shift in perspective is central to a user-centric approach, which prioritizes the needs and experiences of individuals seeking justice. Farrow and Jacobs advocate for a broader understanding of access to justice, encompassing a diverse range of information, institutions, and organizations that help individuals navigate legal challenges.<sup>30</sup> They argue that access to justice should not be limited to formal legal institutions but should include a variety of resources that can help individuals understand, prevent, and resolve legal problems.<sup>31</sup> This broader understanding of access to justice recognizes that legal problems are often intertwined with other social, economic, and health issues and that solutions must address these interconnected challenges holistically.

Traditional approaches often focus on providing legal services through lawyers and courts. While essential, this approach can be inadequate in addressing the multifaceted nature of legal problems, which are often intertwined with social, economic, and health issues. A user-centric approach recognizes these interconnected challenges and emphasizes holistic solutions. It seeks to empower individuals to take control of their legal situations by providing them with the information, tools, and support they need to understand their legal rights and responsibilities and to navigate the justice system effectively. This approach recognizes that not everyone has the same level of legal knowledge or access to resources and that solutions must be tailored to the specific needs of different individuals and communities.

Public legal education, preventative law, and community-based services are crucial in empowering individuals to understand their legal rights and responsibilities. As Mathews and Wiseman articulate, access to justice is about enabling individuals to pursue their goals and address their law-related problems in ways that are consistent with fair legal standards and processes.<sup>32</sup> They emphasize the importance of providing individuals with the information and tools they need to make informed decisions about their legal matters and to participate meaningfully in the justice system.<sup>33</sup> This includes providing clear and concise explanations of legal concepts, simplifying legal processes and procedures, and offering support services to help individuals navigate the system.

#### E. The Role of Technology in a User-Centric System

Technology is a powerful tool for facilitating a user-centric approach to justice. However, it's crucial to ensure that technology serves the goals of a redesigned, user-centric legal system, rather than simply being layered onto existing processes. This is where the “technology follows law” principle comes into play. This principle emphasizes that technology should complement and enhance legal reforms, not drive them. Technology should be used to make a user-centric justice system more accessible, efficient, and

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<sup>28</sup> *Ibid* at 87-91.

<sup>29</sup> *Ibid* at 119-120.

<sup>30</sup> Farrow & Jacobs, *supra* note 9.

<sup>31</sup> *Ibid* at 4.

<sup>32</sup> Julie Mathews & David Wiseman, *Community Justice Help: Advancing Community-Based Access to Justice* (Toronto: Community Legal Education Ontario, July 2020) at 11, online: <[https://www.cleo.on.ca/sites/default/files/docs/Community-Justice-Help-Advancing-Community-Based-Access-to-Justice\\_discussion-paper-July-2020.pdf](https://www.cleo.on.ca/sites/default/files/docs/Community-Justice-Help-Advancing-Community-Based-Access-to-Justice_discussion-paper-July-2020.pdf)>.

<sup>33</sup> *Ibid* at 7.



user-friendly, not to simply replicate existing processes in a digital format. In essence, the “technology follows law” principle advocates for a thoughtful and purposeful integration of technology, ensuring that it aligns with the goals of a user-centric justice system and serves to empower individuals rather than further complicating their legal journeys.

To illustrate this principle, consider the example of ODR. ODR platforms can be designed to guide users through a dispute resolution process, providing information, resources, and communication tools to help them reach a resolution. However, the effectiveness of ODR depends on the legal framework that underpins it. If the legal rules and procedures are complex and difficult to understand, simply providing an online platform will not make the process more accessible or user-friendly. Instead, the law itself needs to be redesigned with user-centricity in mind, simplifying procedures and using plain language. Once this is done, technology can be effectively used to facilitate this redesigned process, making it more accessible and convenient for users.

Conversely, consider the example of facial recognition technology being used in courtrooms to identify individuals with outstanding warrants. While this technology may seem efficient, it raises serious concerns about privacy, due process, and the potential for bias. In this case, technology is driving legal changes without sufficient consideration of the ethical and legal implications. This is a clear violation of the “technology follows law” principle, where technology is being used to enforce the law rather than being guided by it.

A system where technology follows law must be alive to the concern of replicating existing barriers through digitization, which Chiodo and Susskind refer to as “grafting” technology onto existing processes.<sup>34</sup> They pointed out that this approach fails to address the underlying issues of cost, complexity, and accessibility that hinder access to justice.<sup>35</sup> Simply digitizing existing processes without considering the needs and experiences of users can lead to new barriers and further marginalization of vulnerable groups. This “grafting” approach can be likened to putting a digital facade on an outdated system, creating the illusion of modernization without addressing the fundamental issues that prevent meaningful access to justice. The experiences of Canadian provinces during the COVID-19 pandemic illustrate this point. While the adoption of digital tools like e-filing and virtual hearings has brought some benefits, it has also highlighted the limitations of simply digitizing existing processes.

Technology can play a transformative role in facilitating a user-centric approach to justice. By leveraging technology thoughtfully and purposefully, we can create a justice system that is more accessible, efficient, and responsive to the needs of all individuals. This involves using technology to:

- **Provide Access to Legal Information and Resources:** Technology can be used to create online platforms and databases that provide individuals with easy access to legal information, self-help guides, and other resources. This can help to empower individuals to understand their legal rights and options and to navigate the justice system more effectively.
- **Facilitate Communication and Collaboration:** Technology can be used to facilitate communication and collaboration between individuals, legal professionals, and court staff. This can include online platforms for scheduling appointments, sharing documents, and conducting virtual meetings.

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<sup>34</sup> Chiodo, *supra* note 8 at 828; Susskind, *supra* note 1 at 63.

<sup>35</sup> *Ibid.*

- **Simplify Legal Processes and Procedures:** Technology can be used to simplify legal processes and procedures, making them more user-friendly and accessible. This can include online forms, automated document generation, and interactive guides that explain legal concepts in plain language.
- **Support Online Dispute Resolution:** Technology can be used to support ODR processes, providing a more convenient and accessible way for individuals to resolve disputes without having to go to court.
- **Enhance Courtroom Accessibility:** Technology can be used to enhance courtroom accessibility for individuals with disabilities, such as providing real-time captioning, assistive listening devices, and remote participation options.

## **F. The Future of Access to Digital Justice**

The future of access to digital justice is likely to be shaped by continued technological advancements, evolving user needs, and policy and regulatory frameworks. As technology continues to evolve, new opportunities and challenges will emerge for the justice system. Artificial intelligence, machine learning, and other emerging technologies have the potential to transform the way justice is delivered, but they also raise ethical and legal concerns that need to be carefully addressed.

The needs and expectations of court users are also constantly changing, and digital justice solutions need to be adaptable and responsive to these changes. This requires ongoing user research and feedback to ensure that technology is being used in a way that meets the needs of all users.

Policy and regulatory frameworks also play a crucial role in shaping the future of digital justice. Governments and regulatory bodies need to develop clear and consistent frameworks to guide the ethical and responsible use of technology in the justice system. This includes addressing issues such as data privacy, cybersecurity, and algorithmic bias.

## **III. WHAT ARE ACCESS TO JUSTICE CENTRES?**

### **A. A Proposed Solution**

Multi-functional AJCs offer a promising model for bridging the digital divide and ensuring that technology is used to promote a more equitable and accessible justice system. We propose the establishment of AJCs as physical spaces that provide individuals with access to technology, legal information, and support, empowering them to effectively engage with the justice system. This approach aligns with the findings of the National Self-Represented Litigants Project's "Family Law at the Library" project, which demonstrated the potential of public libraries to serve as access points for legal information and assistance.<sup>36</sup>

AJCs can also serve as a hub for community justice services, providing a centralized location for individuals to access legal information, advice, and representation. This can be particularly beneficial for individuals in rural or remote communities who may face additional barriers to accessing justice. By integrating technology with in-person support and community-based services, AJCs offer a holistic approach to addressing the access to justice crisis.

A "back to basics" re-think of providing justice services of this nature can go beyond simply grafting technology onto existing court processes by offering a fundamentally different approach to justice, one that is designed around the needs of users and leverages technology to facilitate a more accessible,

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<sup>36</sup> National Self-Represented Litigants Project (NSRLP), *Library Project Report* (2023), online: <<https://representingyourselfcanada.com/library/>>.

efficient, and collaborative process. This approach is consistent with the “technology follows law” principle, where technology is used to support and enhance a redesigned, user-centric legal system. The design and implementation of AJCs should prioritize user-centric design principles to ensure that technology serves the goals of a user-centric justice system. This includes ensuring that technology interfaces are intuitive, accessible, and easy to use for individuals with varying levels of digital literacy, and that AJCs provide dedicated support and resources for self-represented litigants.

### **B. Addressing the "Grafting" Concern: How AJCs Go Beyond**

The concern that AJCs might simply relocate traditional court processes to a new technological setting is a valid one. However, the design of AJCs inherently addresses this "grafting" concern in several ways:

- **Transforming the Justice System:** AJCs are not just about digitizing existing processes; they are about transforming the justice system to be more user-centered and accessible. This involves rethinking the way legal services are delivered, making them more convenient, affordable, and understandable for everyone. For example, AJCs could offer flexible scheduling options, including evening and weekend hours, to accommodate the needs of individuals who cannot take time off work during the day.
- **Holistic Approach to Justice:** AJCs can provide a holistic approach to justice by integrating technology with in-person support, community-based services, and a focus on collaboration and dispute resolution. This goes beyond simply providing access to virtual hearings or e-filing documents. For instance, AJCs could partner with community organizations to offer wraparound services such as financial literacy programs, mental health support, and social services; recognizing that legal problems are often intertwined with other social and economic issues.
- **Empowering Individuals:** AJCs aim to empower individuals to take control of their legal situations by providing them with the necessary tools, information, and support. This includes access to technology, legal information, and trained professionals who can assist them in navigating the legal system. This empowerment can be achieved through workshops, training sessions, and one-on-one consultations that help individuals understand their legal rights and options.
- **Flexibility and Adaptability:** AJCs can be designed to be flexible and adaptable to the specific needs of different communities and individuals. This means offering a range of services and resources that can be tailored to different legal issues, technological proficiency, and personal preferences. For example, AJCs could offer services in multiple languages, provide assistive technology for individuals with disabilities, and offer different modes of service delivery, such as in-person, online, or by phone.

We propose to address the “grafting” concern by offering a fundamentally different approach to justice, one that is designed around the needs of users and leverages technology to facilitate a more accessible, efficient, and collaborative process. AJCs are not just about digitizing existing processes; they are about transforming the justice system to be more user-centered and accessible. This involves rethinking the way legal services are delivered, making them more convenient, affordable, and understandable for everyone. For example, AJCs could offer flexible scheduling options, including evening and weekend hours, to accommodate the needs of individuals who cannot take time off work during the day.

This approach can provide a holistic approach to justice by integrating technology with in-person support, community-based services, and a focus on collaboration and dispute resolution. This goes beyond simply providing access to virtual hearings or e-filing documents. For instance, AJCs could partner with community organizations to offer wraparound services such as financial literacy programs, mental health support, and social services, recognizing that legal problems are often intertwined with other social and economic issues. Furthermore, AJCs aim to empower individuals to take control of their legal situations by providing them with the necessary tools, information, and support. This includes access to technology, legal information, and trained professionals who can assist them in navigating the legal system. This empowerment can be achieved through workshops, training sessions, and one-on-one consultations that help individuals understand their legal rights and options.

Similarly, AJCs can be designed to be flexible and adaptable to the specific needs of different communities and individuals. This means offering a range of services and resources that can be tailored to different legal issues, technological proficiency, and personal preferences. For example, these centres could offer services in multiple languages, provide assistive technology for individuals with disabilities, and offer different modes of service delivery, such as in-person, online, or by phone.

### **C. The Role of AJCs in Facilitating User-Centric Justice**

AJCs offer a promising model for integrating technology into the justice system in a way that is user-centric, accessible, and equitable. They provide a physical space with technology and support, empowering individuals to engage with the justice system effectively, regardless of their technological proficiency or socioeconomic background. This approach aligns with the user-centric design principles advocated by Kulp and Schmitz and addresses the concerns raised by Byrom, Beardon, and Kendrick about the potential for remote hearings to exacerbate existing access to justice barriers.

A centralized community justice hub can help bridge the digital divide by providing access to technology and digital literacy training. This is particularly important for individuals in rural or remote communities who may have limited access to technology or the internet. By providing a physical space with computers, internet access, and trained staff to assist with digital literacy skills, AJCs can ensure that everyone has the opportunity to engage with the digital justice system. The immediate “access to technology” and “access to justice services” needs can be met by the infrastructure itself, while the wraparound services provided at these centres can address the long-term justice capacity-building needs of communities.

AJCs can play a crucial role in facilitating a user-centric approach to justice by providing a physical space where individuals can access technology, legal information, and support. This can help to bridge the digital divide and ensure that everyone has the opportunity to engage with the justice system effectively. By integrating technology with in-person support and community-based services, AJCs offer a holistic approach to addressing the access to justice crisis. They can provide a range of services, including:

- **Technology Access and Digital Literacy Training:** AJCs can provide individuals with access to computers, internet connectivity, and digital literacy training to help them develop the skills they need to navigate the digital justice system.
- **Legal Information and Self-Help Resources:** AJCs can provide access to legal information databases, self-help guides, and other resources that can help individuals understand their legal rights and options.

- Online Dispute Resolution Platforms: AJCs can offer access to ODR platforms, providing a more convenient and accessible way for individuals to resolve disputes without having to go to court.
- Virtual Legal Clinics: AJCs can host virtual legal clinics, connecting individuals with lawyers and paralegals who can provide legal advice and representation remotely.
- Community Justice Workers: AJCs can have community justice workers on-site who can provide individuals with in-person support, guidance, and referrals to other community services.

#### **D. AJCs and the “Technology Follows Law” Principle in Action**

AJCs adhere to the “technology follows law” principle by ensuring technology serves a redesigned, user-centric legal framework. This means that technology is used to enhance and support a justice system that is designed around the needs of its users, rather than simply replicating existing processes in a digital format. For instance, AJCs can incorporate simplified legal processes and procedures, making them easier for individuals to understand and navigate. Technology can then be used to facilitate these simplified processes by providing interactive online guides, automated forms, and plain-language explanations of legal concepts. Instead of requiring users to navigate complex legal documents, AJCs could offer interactive online tools that guide users through the process of filling out forms or understanding their legal rights. AJCs can prioritize collaboration and dispute resolution over adversarial legal proceedings. Technology can support this by providing ODR platforms, virtual mediation tools, and access to legal information and resources that empower individuals to resolve disputes amicably. To meet these expectations, AJCs could offer online platforms where parties can communicate, negotiate, and potentially reach a resolution with the assistance of a virtual mediator, reducing the need for formal court proceedings. The technologies and processes used at AJCs should be designed with user-centricity in mind, ensuring that interfaces are intuitive, accessible, and easy to use for individuals with varying levels of digital literacy. This could involve designing interfaces with clear visual cues, simple language, and accessibility features for individuals with disabilities, ensuring that technology does not create new barriers to accessing justice. Additionally, AJCs can provide dedicated support and resources for self-represented litigants [SRLs], who often face significant challenges in navigating the legal system. Technology can be used to provide SRLs with tailored information, guidance, and access to virtual legal assistance. This could include online resources that provide step-by-step instructions for common legal processes, as well as access to virtual legal clinics where SRLs can receive advice and assistance from qualified professionals.

#### **E. AJCs: A Bridge to Digital Justice**

In summary, a user-centric approach to access to justice recognizes the diverse needs and challenges faced by individuals seeking justice and places them at the center of the justice system. Technology plays a crucial role in facilitating this approach, but it must be integrated thoughtfully and purposefully, ensuring that it serves the goals of a user-centric justice system. AJCs offer a promising model for achieving this, providing a physical space with technology, support, and community-based services to empower individuals to effectively engage with the justice system and overcome the barriers to access to justice. By embracing the principles of user-centricity and the “technology follows law” principle, AJCs can help to create a justice system that is more accessible, equitable, and responsive to the needs of all individuals. They represent a significant step towards a future where technology is used to empower individuals and promote a more just and inclusive society.

## IV. CANADIAN JUDGES, TECHNOLOGY AND ACCESS TO JUSTICE

### A. Judges and Digital Justice

The support of judges is crucial to the success of improving access to digital justice by transforming some courts into user-friendly digital justice hubs or portals. We believe Canadian judges are ready for such changes based on recent research concerning their use of technology and judicial attitudes and beliefs regarding justice delivered digitally.

An international research project into the nexus of judges and technology, led by researchers from the University of Newcastle Australia, created an online survey that was administered in several common law and civil law countries. The authors conducted the investigation in Canada using a bilingual questionnaire under the aegis of the CIAJ and Athabasca University, the latter of which granted research ethics approval. Judges at all levels across Canada were invited to participate and over one hundred of them did so. The respondents are not a representative sample of the Canadian judiciary, so firm conclusions cannot be drawn from the data. However, the questionnaire responses and voluntary comments offer some indication of the experience of Canadian judges with digital justice and their thinking about it. A full report of the results of the survey in Canada was published by the CIAJ.<sup>37</sup>

The judges in this survey used various digital technologies in their judicial work including computers to prepare decisions, videoconferencing, online legal research databases, and audio recordings. A substantial number of respondents (44%) stated that technology helped in creating template decisions and some (13%) reported the use of technology in “nudging”, alerting or correcting judges. Small numbers of respondents, however, only used case management and electronic trial management systems.<sup>38</sup> Internet access and Wi-Fi was reported to be available in most courts for judges and others.

Undoubtedly, because of the COVID pandemic almost all responding judges had participated in remote trials or hearings using videoconferencing technology over the past five years. Canadian judges seem to be familiar with a variety of digital technologies assisting the delivery of justice, and respondents agreed that technological innovations due to the pandemic would not disappear.

Most of the respondent judges considered that the use of technology in courts improved access to justice, increased judicial efficiency, and did not jeopardize fair outcomes. Judges identified several factors that affect access to justice: quality of Internet access for the public, digital literacy of lawyers, digital literacy of litigants, and availability of internet and audio-video technology.

Here are the responses to Question 29 – “What impact has the increased use of digital technology in your judicial system had on access to justice?”<sup>39</sup>

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<sup>37</sup> Canadian Institute for the Administration of Justice, “Report on the Results of a Survey of Canadian Judges Concerning Technology in Judging Conducted by the Canadian Institute for the Administration of Justice and Athabasca University in 2022” (Montréal: Canadian Institute for the Administration of Justice, 2023), online: <[https://ciaj-icaj.ca/wp-content/uploads/page/2023/08/ciaj-athabasca\\_2023-report-on-canadian-judges-and-technology\\_en.pdf](https://ciaj-icaj.ca/wp-content/uploads/page/2023/08/ciaj-athabasca_2023-report-on-canadian-judges-and-technology_en.pdf)> [“CIAJ-Athabasca Survey”]

<sup>38</sup> Susskind, *supra* note 1 at 149-150 reports a similar finding: “One area in which there is judicial disappointment in most jurisdictions is in applications that fall under the broad heading of ‘case management’. This term is used in many different ways, but the generic grievance here is that the systems that are available to judges do not generally support them directly in the everyday management of their cases and documents. ... In most countries, despite the remarkable advances in technology generally, progress in the past 20 years in digital case management has been slow. The organization of most of the work of the world’s courts is still labour-intensive, cumbersome, and paperbased.”

<sup>39</sup> CIAJ-Athabasca Survey, *supra* note 37 at 10.

Positive		Negative	No impact
Lower Court or First Instance Judge	80.0%	5.7%	14.3%
Intermediate Court or Second Instance Judge	80.6%	16.7%	2.8%
Higher Court or Third Instance Judge	93.3%	6.7%	

Comments related to this question highlighted the advantage to litigants of remote hearings that reduced the need to travel, with savings in time and expense. A majority (60%) of respondents thought that video conferencing technology performs “well” or “very well” for the purpose of remote hearings and that it supports fair outcomes. However, judges with criminal caseloads were less convinced that remote hearings led to fair outcomes and special attention must be given to ensuring due process in such cases.<sup>40</sup>

However, respondent judges also noted technological and other difficulties with this innovation. A large majority of the judges (79%) stated they believed parties experience difficulties using remote services provided by their courts. The main causes of such problems were identified as “quality of audio-visual technology”, “difficulty accessing technologies for remote access”, “availability of audio-visual technology”, and “complication of court processes when accessed remotely”.

Here are some representative comments made by the judges that give more insight into their thoughts and concerns about remote hearings and trials:

- The positive of online hearings is that it reduces the need for the public to travel to the judicial centre to attend an interlocutory matter. The negative has been that many self-represented litigants do not have the technology or capacity to use it effectively. They also do not treat the hearing with the same level of respect they would if at the courthouse.<sup>41</sup>
- For both sophisticated, self-represented parties and represented parties, I think that it has the potential and can facilitate access to justice, particularly in remote communities, a convenient time so party doesn’t lose a whole day of work for a one hour attendance, etc. But not everyone has access. I think courts should provide zoom rooms and computers for those without access.<sup>42</sup>
- There has been improved access through use of remote and hybrid hearings but there have also been problems, for example “zoom bombing” and inappropriate use of court proceedings streamed on the internet. Also use of technology and access to technology is uneven amongst lower income groups, persons suffering from disabilities and other factors such as the geographical availability of reliable internet services.<sup>43</sup>

<sup>40</sup> *Ibid* at 24. The experience of judges using remote hearings in civil cases seems to be quite positive. One judge remarked: When we first prepared rules of procedure covering video conference testimony in about 2005, we were doubtful that the broadcast would be good enough to allow fair assessment of witnesses. I was quickly surprised by how well and quickly the available technology developed. With proper controls, some of which are in our Civil Procedure Rules, a judge is able to fairly assess remote testimony.

<sup>41</sup> *Ibid* at 11.

<sup>42</sup> *Ibid* at 12.

<sup>43</sup> *Ibid*.

## B. Judicial Attitudes

A sizeable majority (71%) of respondent judges reported they did not think their courts were making the best use of technology. Almost all agreed that the existing court process could be made more efficient with its best use and a large number (77%) agreed that existing processes could be transformed to reflect the best use of technology.

Most judges indicated they felt their work as a judge had changed since they were first appointed and agreed that more change is still needed. Although a substantial number (42%) of respondents agreed or strongly agreed that the amount of change has brought judges to a breaking point, nevertheless 83% of them stated they still enjoyed their work as a judge.

## C. Effects of Technology and Expectations for the Future

A solid majority (60%) of respondents thought that video conferencing technology performs “well” or “very well” for the purpose of remote hearings and that it supports fair outcomes. However, about the same number stated that they would prefer a mixture of in-person and online proceedings.

There was strong agreement amongst respondents that increased use of digital technology in the judicial system has had a positive impact on access to justice. The most important factors for the judges related to the impact of technology on access to justice were quality of Internet access for the public, digital literacy of lawyers, digital literacy of litigants, and availability of internet and audio-video technology.

Most (77%) of the judges considered that technology would help them work more effectively into the future. Regarding the prospect of judges being replaced by technology, 80% did not consider this possible in the next ten years, but that number dropped to 62% looking twenty years ahead, and only 48% rejected the possibility thirty years into the future.

Technological change in the justice system did not worry the respondents as much as these other challenges that ranked higher in concern: increase in parties without legal representation, fiscal constraints on courts, loss of respect for the judiciary by government, and reduction in face-to-face hearings. Technology is of course implicated in this last matter of concern.

Most respondents expected that changes made due to the COVID epidemic would continue. The judges in this survey overall appear to be convinced that technology can help to improve access to justice in Canada, without loss of the high quality of justice aspired to by our courts.

## V. A CASE FOR MULTI-FUNCTIONAL ACCESS TO JUSTICE CENTRES

### A. Circuit Courts and Access to Justice

Circuit courts can be considered the first access to justice initiative in the common law world. They originated in 1166 with a Declaration by Henry II at the Assize of Clarendon which directed judges from London to travel around the country to dispense common law justice. This “circuit system” as it became to be known lasted in the United Kingdom until replaced in 1971 by modern circuits.<sup>44</sup> Circuits proved useful in bringing justice to those outside major population centres in times and places with poor means

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<sup>44</sup> United Kingdom Courts and Tribunals Judiciary, *Overview of the Judiciary* (2024), online: <<https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary-in-england-and-wales/history-of-the-judiciary/>>.



of transportation and communication.<sup>45</sup> The circuit system was adopted in some British colonies and persisted as they progressed to independent nations such as Canada.<sup>46</sup>

Circuit courts continue to provide access to justice in Canada. All the large provinces and the territories have circuit courts<sup>47</sup> although they may be called by different names such as the “itinerant court” in Québec and “satellite courts” in Nova Scotia and Ontario; the latter also has “fly-in courts”. Some Canadian circuit courts sit in Indigenous communities<sup>48</sup> and some First Nations provide their own purpose-built justice facilities for circuit court use.<sup>49</sup>

The Alberta Court of Justice (formerly the Provincial Court) has dozens of circuit court locations in remote areas.<sup>50</sup> One comment from respondent judges is illustrative of the role they play in the administration of justice:

We live and work in a smaller urban centre, and our circuit courts are in remote areas. Technology allows us to be connected to our different Court centres and not be subject to weather, lack of resources etc. It also gives us easy access to reference materials, continuing education etc. that would otherwise require us to travel to access.<sup>51</sup>

There is no doubt that circuit courts provide access to judges to those living outside established judicial centers which they otherwise would not have. But their operations are far from perfect and could be improved. The primary drawback of the circuit system lies in its very nature by providing only intermittent service. Urgent matters that require judicial action either go unheard or the parties are forced to go in search of a venue. The impact on more routine cases is that they are required to join a sometimes-

<sup>45</sup> “The twice-yearly assizes brought justice to provincial towns throughout Britain, and saved litigants and jurors the trouble and expense of journeying to London.” United Kingdom Parliament, *The Assizes* (2024), online: <<https://www.parliament.uk/about/living-heritage/transformingsociety/laworder/court/overview/assizes/>>.

<sup>46</sup> See Law Society of Ontario, *Superior Court on Autumn Circuit* (2024), online: <<https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/exhibitions-and-virtual-museum/historical-vignettes/legal-history/superior-court-on-autumn-circuit>>; Donald Fyson, *The Court Structure Of Québec And Lower Canada 1764 To 1860* (2023), Ch II Circuit Court(s), online: <<http://www.profs.hst.ulaval.ca/Dfyson/Courtstr/circuit.htm>>; William G Morrow, “Riding Circuit in the Arctic” (1974) 58:5 *Judicature* 236; Graham Price, “Lawyers and Judges on Circuit in Canada’s Northwest Territories in the Twentieth Century” (2014) 52:1 *Alta L Rev* 83.

<sup>47</sup> Provincial Circuit Court Locations: Alberta, online: <<https://albertacourts.ca/cj/court-practice-and-schedules/locations-map>> [*AB Courts Map*]; British Columbia – 44 locations, online: <<https://www2.gov.bc.ca/gov/content/justice/courthouse-services/courthouse-locations>>; Manitoba – 53 locations, online: <<https://www.manitobacourts.mb.ca/provincial-court/circuit-court-calendar/>>; Newfoundland and Labrador – 15 locations, online: <<https://www.court.nl.ca/provincial/about/circuit-court/>>; Northwest Territories, online: <<https://www.nwtcourts.ca/en/files/schedule/sittings/tc/Territorial%20Court%20Scheduled%20Sittings%20%28Upcoming%20Year%29.pdf>>; Nova Scotia, online: <<https://www.courts.ns.ca/locations>>; Nunavut, online: <<https://www.nunavutcourts.ca/index.php/nucj-court-schedule>>; Ontario – 54 satellite and 29 fly-in locations, online: <<https://www.ontario.ca/locations/courts>>; Québec, online: <<https://www.justice.gouv.qc.ca/en/join-us/regions-et-localites-desservies-de-facon-itinerante/>>; Saskatchewan – 60 locations, online: <<https://sasklawcourts.ca/provincial-court/court-locations-sitting-times-pc/>>; see also Saskatchewan, online: <<https://sasklawcourts.ca/kings-bench/court-locations/>>; Yukon – 13 locations, online: <<https://www.yukoncourts.ca/en/territorial-court/court-calendars>>.

<sup>48</sup> See e.g. the Cree-speaking circuit court in Saskatchewan: Kimberly Shakun, “Northern Cree Court Initiative”, *University of Saskatchewan Indigenous Saskatchewan Encyclopedia* (2004), online: <[https://teaching.usask.ca/indigenoussk/import/northern\\_cree\\_court\\_initiative.php](https://teaching.usask.ca/indigenoussk/import/northern_cree_court_initiative.php)>; Nicole Wong, “Circuit Courts to Return to Manitoba First Nations”, *Winnipeg Sun* (16 August 2020), online: <[https://winnipegnews.com/news/news-news-news/circuit-courts-to-return-to-manitoba-first-nations](https://winnipegnews.com/news/news-news/circuit-courts-to-return-to-manitoba-first-nations)>.

<sup>49</sup> See Cree Nation Government, “Itinerant Court Information” (2024), online: <<https://www.creejustice.ca/index.php/ca/itinerant-court/itinerant-court-resources>> [“Cree Nation Itinerant Court”].

<sup>50</sup> See *AB Courts Map*, *supra* note 47.

<sup>51</sup> “CIAJ-Athabasca Survey”, *supra* note 37 at 11.

unmanageable queue waiting for the next judicial appearance at which the circuit courthouse is congested with litigants, some of whom face adjournments due to lack of judicial time. These and other deficiencies in the current operation of Canadian circuit courts have been well documented:

- Delays in hearings and the cascading effect on the prompt administration of justice;<sup>52</sup>
- Inadequacy and unsuitability of temporary court locations;<sup>53</sup>
- Unavailability of judges to travel;<sup>54</sup>
- Inadequacy of digital infrastructure for use of the court;<sup>55</sup> and
- Inadequacy of digital infrastructure for litigants.<sup>56</sup>

<sup>52</sup> Department of Justice Canada, “Legal Aid, Courtworker, and Public Legal Education and Information Needs in the Yukon Territory: Final Report” (Ottawa: Department of Justice, 2002), online: <[https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr03\\_la11-rr03\\_aj11/p3.html](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr03_la11-rr03_aj11/p3.html)>; Department of Justice Canada, “Legal Service Provision in Northern Canada Summary of Research in the Northwest Territories, Nunavut, and the Yukon” (Ottawa: Department of Justice, 2003), online: <[https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr03\\_la15-rr03\\_aj15/p5.html](https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr03_la15-rr03_aj15/p5.html)>; Ontario Court of Justice and Ministry of the Attorney General Joint Fly-In Court Working Group, “Report on Fly-In Court Operations” (Toronto: Ontario Court of Justice, 2013), online: <<https://www.ontariocourts.ca/ocj/files/reports/fly-in.pdf>> [“Ontario Fly-In Report”]; Jean-Claude Latraverse, “Report on the Situation of the Itinerant Court in Nunavik” (Québec City: Government of Québec, 2022), online: <[https://cdn-contentu.Québec.ca/cdn-contentu/adm/min/justice/publications-adm/rapports/Report\\_Latraverse\\_2022-07-06.pdf](https://cdn-contentu.Québec.ca/cdn-contentu/adm/min/justice/publications-adm/rapports/Report_Latraverse_2022-07-06.pdf)>; Jessica Mach, “Report Finds Major Disparity Between Urban and Rural Legal Services in Yukon” (2024), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/resources/professional-regulation/report-finds-major-disparity-between-urban-and-rural-legal-services-in-yukon/387946>>.

<sup>53</sup> See “Ontario Fly-In Report”, *supra* note 52; Nunavut Courts, “Joint Operational Directive #2 Court Facilities” (2021), online: <<https://www.nunavutcourts.ca/index.php/court-policies-nucj/joint-operational-directives-nucj?download=324:jo-2>>.

<sup>54</sup> CTV News, “Hundreds of cases postponed over shortage of judges in Québec’s Nunavik region” (19 July 2022), online: <<https://montreal.ctvnews.ca/hundreds-of-cases-postponed-over-shortage-of-judges-in-Québec-s-nunavik-region-1.5993815?cache=adwgpdkdxjxynpjmr%3FclipId%3D104070%3FautoPlay%3Dtrue%3FautoPlay%3Dtrue>>; One report indicates that circuit courts travelled 177,824 km in Nunavut in 2004; Nunavut Court of Justice, *2004 Annual Report* (2004) at 11, online: <<https://www.nunavutcourts.ca/index.php/annualreports>>.

<sup>55</sup> Some judges in our survey found circuit courthouses lacking the necessary infrastructure and support to carry out judicial functions effectively using technology. One commented:

Some of our circuit courts have no internet access in the courtroom and limited hard-wired access only in Chambers. This is a significant obstacle to sitting on those assignments. Whenever there are changes in hardware it takes months or years for the hardwired changes to be made to allow chambers access in circuit. There is no onsite support—IT resources only work remotely so any upgrade requiring a physical installation is rarely if ever done. “CIAJ-Athabasca Survey”, *supra* note 37 at 8.

See also “Ontario Fly-In Report”, *supra* note 52.

<sup>56</sup> Judges in circuit courts reported more technical difficulties experienced by parties:

- Access to sufficient internet bandwidth in some remote areas is limited. Most people are able to access the technology, but there are some people who struggle with it (particularly litigants who are older).
- Connection reliability of the participants and witnesses.
- We do not have an A to Z electronic platform and we keep changing the processes.
- Some lawyers have very poor internet connections and therefore are “dropped” or indicate they are unable to participate by video. Sound packages break up.
- Marginalized litigants who are struggling with basic needs have no reliable access to technology and are further excluded from the justice system with these developments. Community agencies do not receive the funding to fill the gap by becoming remote access court sites.

The Supreme Court has affirmed that physical access to the courts is a key constitutional principle.<sup>57</sup> Although we recognize that Canada's geography sets limits on the feasibility of providing such access in remote areas, we believe more must be done by provincial legislatures considering the possibilities of digital justice as discussed in this paper. Access to justice is not only the responsibility of courts, judges and lawyers, but also governments which are constitutionally mandated to secure the fair and efficient administration of justice.<sup>58</sup>

Circuit courts are valuable physical and symbolic assets in Canada's legal system and should be put to the best use in delivering digital justice. They need to be upgraded to state of the art nodes for connecting digitally with courts and other components of the justice system.

In the following section we propose the renewal of Canada's circuit court system to improve access to the courts through both traditional and digital means. We advance the concept of an AJC, encompassing both its definition and the rationale behind it in the light of our survey's findings and other data.

## B. Circuit Courts Reimagined

Our proposal is to reimagine and reconfigure existing circuit court infrastructure to operate as multi-functional AJCs. Such centres would extend access to justice both traditional and digital by providing facilities that would accommodate both online and in person court proceedings as well as hosting auxiliary services such as legal guidance and dispute resolution opportunities. AJCs would serve both represented and self-presented litigants and have the capacity to deliver "mixed mode" hearings for in person and virtual participants. Those cases which might be best suited to traditional proceedings, such as jury trials, might still be held in AJCs with all parties present including the judge.

First, we want to raise and dismiss one potential solution to the problems of circuit courts which is simply to close most of them and leave litigants to access digital court services using their own private means.

One "apparently intuitive" response to the advent of digital justice is to close existing courthouses due to the decline of in-person adjudication. This has happened to a great and alarming extent in England and Wales, where courts have been shuttered for "inactivity".<sup>59</sup> In our view, such an approach is shortsighted and detrimental to access to justice. Instead, we propose repurposing existing courthouses, especially circuit venues in remote locations, as AJCs where the public can engage effectively with digital justice services at all levels of courts, tribunals, and alternative dispute resolution forums.

Susskind asserts that courts are a "service not a place",<sup>60</sup> and that technology can improve the administration of justice by providing a digitally enabled space for effective and efficient procedures carried on asynchronously. Although we share his enthusiasm for the potential of digital justice, we respectfully disagree with him on this point.

<sup>57</sup> *BCGEU v British Columbia (Attorney General)*, [1988] SCR 214.

<sup>58</sup> See Bhabha, Faisal, "Institutionalizing Access to Justice: Judicial, Legislative and Grassroots Dimensions" (2007), 33 Queen's LJ 139.

<sup>59</sup> This course of action has also apparently been recommended but rejected in Ontario, Auditor General of Ontario, "2019 Annual Report" Vol 3 (Toronto: Auditor General, 2019), online: <<https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2019.html>>; Ontario: Auditor General of Ontario, "2021 Annual Report" (Toronto: Auditor General, 2021) at Ch1 Section 1.15, online: <<https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2021.html>>; In Manitoba, circuit courts have been closed, Manitoba Courts, "Notice Re Winnipeg Circuits" (2023), online: <[https://www.manitobacourts.mb.ca/site/assets/files/2069/119\\_-\\_notice\\_-\\_circuit\\_cancellation\\_notice\\_-\\_winnipeg\\_centre\\_may\\_25\\_2023.pdf](https://www.manitobacourts.mb.ca/site/assets/files/2069/119_-_notice_-_circuit_cancellation_notice_-_winnipeg_centre_may_25_2023.pdf)>.

<sup>60</sup> Susskind, *supra* note 1 at 95.

In our view, courts are both a place and a service, exemplified by their role as the location for ceremonies of innocence and guilt,<sup>61</sup> rituals of empathy and understanding, and celebrations of the rule of law. This role of courts and the judges that service them are what make courts an institution and not merely a mechanism in society. We suggest such events are more powerful and meaningful when conducted synchronously, whether through virtual or physical participation.

As reported by judges in our research described above, remote proceedings run the risk of losing the atmosphere of a court with a resulting decline in decorum, respect, and impact on the participants. Denault and Patterson remind us of the consequences of attenuated presence for the perceptions and behaviours of participants in remote hearings.<sup>62</sup>

A study of the consequences of virtual court hearings in Ontario supports these concerns. As Wong states:

A court divorced from its built form furnishes a very different set of behavioural cues. A large body of research in environmental psychology has highlighted the link between environment and behaviour, particularly the role of built environment in signaling the appropriate way to behave in a particular setting [references omitted].<sup>63</sup>

Wong cites an Ontario case in which a judge ordered that a remote witness must give her testimony in a more court-like setting than her home.<sup>64</sup>

Our proposal for AJCs is based on the idea that laypeople (and some lawyers) are most affected in their behaviour and attitudes by remote attendance in court proceedings from wherever they may be, often at home. Judges can be expected to always carry with them their judicial decorum and standards of behaviour, whether in-person or online. To preserve the impact and gravitas of a judicial proceeding, it therefore makes sense to provide at least a “court-like” environment for those seeking justice.<sup>65</sup> As described below, judges may still preside in person in AJCs, although on fewer occasions, but the impact of the virtual presence of a robed judge may be heightened through the use of advanced technology such as hologram displays which are now being trialled in legal settings.<sup>66</sup>

AJCs, by using existing court premises, can provide a more suitable venue for digital justice functions rather than being abandoned entirely to the ether of entirely remote proceedings. Further, our proposal envisions that circuit courthouses reconfigured as AJCs would continue to host in person auxiliary services as described below and special hearings such as jury trials. This “mixed mode” manner of operation of circuit courts has been advocated by others.<sup>67</sup>

In addition to the positive impact on litigants described above, we suggest that AJCs may have other benefits and advantages such as:

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<sup>61</sup> Lord Denning, “Law and Life in our Time” (1967), 2:4 U Tasmania LR 348 at 354. Lord Denning referred to the courts as a place for the “emphatic denunciation of crimes”.

<sup>62</sup> Denault & Patterson, *supra* note 22.

<sup>63</sup> Anna SP Wong, *Virtual Court Hearings: Judicial Perspective from Ontario Judgments* (MA Thesis, University of Oxford, 2022), online: <<https://ora.ox.ac.uk/objects/uuid:89d468df-1beb-4c23-9263-2a97acf870da>>.

<sup>64</sup> *R v Zaganjori*, 2019 ONSC 2518.

<sup>65</sup> Susskind, *supra* note 1 at xxx. Susskind refers to this as the question of preserving the “majesty” of courts.

<sup>66</sup> See Amanda Robert “Law school introduces hologram witnesses in mock trial” (2023), *ABA Journal*, online: <<https://www.abajournal.com/news/article/law-school-introduces-hologram-witnesses-in-mock-trial>>; Manique Cooray, Rebecca Mathan & Yay Soon Yeh, “Exploring the Potential Use of Holographic Technology Through Remote Communication Technology in the Malaysian Courts: A Legal Perspective?” (2023) 14:3 Int J Court Admin, online: <<https://iacajournal.org/articles/10.36745/ijca.521>>.

<sup>67</sup> See Latraverse, *supra* note 52; see also “Ontario Fly-In Report”, *supra* note 52.

- Ensuring nearly continuous court services so that many docket matters which currently slow down and sometimes delay circuit hearings can be disposed of in timely fashion.<sup>68</sup>
- Providing premises incorporating Indigenous design principles to accommodate Indigenous justice initiatives which currently have no stable base in many communities.<sup>69</sup>
- Allowing court technologies to be under centralized, rather than distributed, control to avoid delays to updating official court records that currently occur when judges conduct proceedings in person in circuit courts.<sup>70</sup>

In response to question about the difficulties judges face with technology, one judge in our survey noted: The novelty of accessing the court on-line and the incomplete transition to on-line services. For example, the court file is now fragmented and not all of the new electronic documents are accessible to the public or to litigants and counsel. This is a work in progress. We also have various interim solutions - for example electronic filing of certain - but not all - documents, two or more different methods of filing electronically - and the same number of staff now trying to manage filings from various different sources. Lawyers and litigants are in a state of confusion as we transition.

- Offering digital facilities for providing legal information and guidance allowing “triage” of claims with the assistance of artificial intelligence technology.<sup>71</sup>
- Hosting facilities for in person and online services for settling, progressing, and resolving claims through mediation and other processes both western and Indigenous such as the Indigenous Justice Centres being established in British Columbia.<sup>72</sup>

Richard Susskind describes the latter two initiatives as a “front end” to the justice system which could in his view include:

<sup>68</sup> This has been suggested in several reports. See e.g. Latraverse, *supra* note 52.

<sup>69</sup> See e.g. the circular itinerant court premises of the “Cree Nation Itinerant Court”, *supra* note 49; see also Toby S Goldbach, “Building the Aboriginal Conference Settlement Suite: Hope and Realism in Law as a Tool for Social Change” (2021) 46:1 Law & Soc Inquiry 116.

<sup>70</sup> See Latraverse, *supra* note 52.

<sup>71</sup> See e.g. the initiative of the British Columbia courts programs “Clicklaw” and “LawMatters” (2024), online: Courthouse Libraries BC <<https://www.courthouselibrary.ca/our-programs>>; Providing public legal education, legal information and guidance services in circuit court locations was recommended in an Alberta study of legal services, Mary Stratton “Alberta Legal Services Mapping Project: An Overview of Findings from the Eleven Judicial Districts” (2011) Canadian Forum on Civil Justice at 70, online: <https://digitalcommons.osgoode.yorku.ca/cfcj/70>>; see also Jacquelyn Burkell et al, “Court Form Accessibility: Adopting, Designing, and Evaluating Online Guided Pathways” (19 June 2024), Ottawa Faculty of Law Working Paper No 2024-07, online: <<https://ssrn.com/abstract=4870478>>.

<sup>72</sup> See BC First Nations Justice Council, “Indigenous Justice Centres in British Columbia” (2024), online: <<https://bcfnjc.com/indigenous-justice-centres-in-british-columbia/>>; see also “Ontario Fly-In Report”, *supra* note 52; Co-locating a spectrum of justice services was also suggested in Stratton, *supra* note 71; AJCs may serve as a base for Indigenous community justice committees and similar processes which are currently unhoused, see Latraverse, *supra* note 52; Department of Justice, “Review of the Nunavut Community Justice Program: Final Report” (Ottawa: Department of Justice, 2004), online: <[https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr05\\_7/rr05\\_7.pdf](https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr05_7/rr05_7.pdf)>; AJCs may also serve as a transitional step towards Indigenous justice systems: see Angelique EagleWoman, “Envisioning Indigenous Community Courts to Realize Justice in Canada for First Nations” (2019) 56:3 Alta L Rev 669; David Matyas “Short Circuit: A Failing Technology for Administering Justice in Nunavut” (2018) 35 Windsor YB Access Just 379.

... decision trees and diagnostic systems that can help court users, especially those who are self-represented, to understand their entitlements and obligations; guides that help identify the options for resolution that are open to users; tools that can help non-lawyers to organise their evidence and formulate their arguments; facilities to encourage and support parties to settle their differences on their own; case officers who can actively offer mediation and other services in the spirit of alternative dispute resolution (ADR), not as a private-sector offering but as an integral part of the public court service.<sup>73</sup>

We recognize several challenges in establishing the proposed centres but believe these can be surmounted:

- The lack of sufficient reliable Internet access in many remote areas impairs virtual court proceedings.<sup>74</sup>

This challenge is currently being addressed by governments at all levels and soon hopefully will no longer be a problem.<sup>75</sup>

- Ensuring the design of the centres accommodates a variety of functions and remains welcoming and user-friendly while respecting the safety, security and privacy needs of courts will be a hurdle.<sup>76</sup>

Courthouses in Canada are being built and modified to host Indigenous justice processes which points to an emerging design knowledge that can respond to this issue.<sup>77</sup>

- The cost of establishing permanent circuit court facilities and repurposing and renovating current ones will be substantial.

We believe the cost savings from sending judges and court staff on circuits less frequently may offset these costs significantly. In addition, the need to hire more judges as caseloads increase in circuit locations may be lessened by the more efficient use of judicial time. Where multi-function AJCs are constructed or renovated in Indigenous communities some of the costs might be shared with the federal government under its Indigenous justice program.<sup>78</sup>

- Some litigants and witnesses will still need to travel to circuit court locations which cannot be placed in all communities.

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<sup>73</sup> Susskind, *supra* note 1 at xl.

<sup>74</sup> See “Ontario Fly-In Report”, *supra* note 52.

<sup>75</sup> See e.g. Innovation, Science and Economic Development Canada, “High-speed Internet for all Canadians” (Ottawa: Innovation, Science and Economic Development Canada, 2024), online: <<https://ised-isde.canada.ca/site/high-speed-internet-canada/en>>.

<sup>76</sup> See the comparison between courts and public libraries in Beth Bilson, Brea Lowenberger & Graham Sharp, “Reducing the Justice Gap through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries” (2017), 34:2 Windsor YB Access Just 99.

<sup>77</sup> See e.g. Goldbach, *supra* note 69.

<sup>78</sup> See Department of Justice Canada, “Indigenous Justice Program” (30 August 2023), online: <<https://www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/index.html>>.

We would respond that circuit courts operating as we propose will be able to avoid the delays and adjournments currently common in the circuit court system. Those who must travel to access justice will thus at least be assured of their scheduled day in court.

With these recommendations, we aim to contribute to the ongoing development of a more accessible and efficient judicial system. They reflect the potential transformative impact of user-centric legal process design, including the Access to Justice Centre concept. Such initiatives are crucial to progress towards user-central access to justice, and the importance of continued research and adaptation in the field of digital justice cannot be understated.

## VI. CONCLUSION

As we conclude, it is evident that the integration of digital technology into the Canadian judicial system holds transformative potential. Throughout this article, we have explored the various dimensions of digital justice, examining both its successes and the challenges that remain. The proposed repurposing of circuit court facilities into AJCs emerges as a promising solution to bridge gaps in the current system, ensuring that the benefits of digital advancements reach all sectors of society, not just the technologically privileged.

Our analysis underscores the importance of thoughtful implementation through user-centric legal process design, and the need for ongoing evaluation. As digital technologies evolve, so must our approaches to integrating them within dispute resolution contexts. This requires a concerted effort from policymakers, legal professionals, and technologists to work collaboratively. Only through such sustained and inclusive efforts can we ensure that the administration of justice keeps pace with technological change, and that it does so in a way that upholds the principles of fairness, accessibility, and transparency.

Looking ahead, the journey towards a fully integrated digital justice system will undoubtedly present new challenges. However, the foundation laid by current initiatives and the insights gained from them provide a robust basis for future advancements. It is imperative that we continue to foster dialogue among all stakeholders involved in the justice system, drawing on empirical evidence and adapting to emergent technologies to refine and enhance the delivery of justice in Canada. This ongoing process of adaptation and improvement will be crucial in making the promise of digital justice a tangible reality for every Canadian.

We issue a challenge to the Canadian legal system: make digital justice accessible to the public within existing court premises. Judges are ready; the public is waiting; who will take the lead?