

Court of King's Bench of Alberta

Citation: Hamilton v Kosc, 2026 ABKB 227

Date: 20260324
Docket: 2201 04185
Registry: Calgary

Between:

**Darren Hamilton and Darren John Hamilton Professional Corporation doing business as
Darren Hamilton Law Office**

Plaintiffs

- and -

Charlotte Kosc, also known as Charlotte Winslow

Defendant

**Reasons for Decision
of the
Honourable Justice M.A. Marion**

I. Introduction

[1] Electronic hearings in civil matters have been available in Alberta since at least 1998. Despite modest initial uptake, the COVID-19 pandemic created a necessity that accelerated the debate, acceptance and use of electronic hearings in our Court. Now that the pressing public safety concerns requiring use electronic hearings to facilitate access to justice have receded, this decision provides an opportunity to circle-back and reflect on what has been learned, and to consider relevant factors in the exercise of the Court's discretion when an electronic hearing is requested that is different than the default mode of hearing.

[2] The trial in this matter is scheduled to start before me on April 13, 2026. The plaintiffs are a Calgary lawyer, Darren Hamilton (**Hamilton**), and his professional corporation. The defendant, Charlotte Kosc, also known as Charlotte Winslow (**Kosc**), is a resident of Manitoba. In a nutshell, Hamilton sues Kosc for defamation, online harassment, intentional infliction of mental suffering, and breach of privacy, relating to allegedly defamatory statements he asserts Kosc published about

him. The alleged online publishing appears to describe, among other things, Kosc's assertion that Hamilton took advantage of her as a minor and sexually assaulted her.

[3] Both parties filed pre-trial applications before me as trial judge, which I heard together. Kosc applies for permission to attend the entirety of the trial remotely from Manitoba. Hamilton seeks permission to have one of his witnesses (a proposed expert) Sara Wilken (**Wilken**) testify remotely from Montreal. They each oppose the other's application.

[4] For the reasons set out below:

- (a) Kosc's application is granted in part. She is permitted to attend the trial remotely via closed circuit television (**CCTV**), or such other Court-approved technology, from another room in the Calgary Courts Centre; and
- (b) Hamilton's application is dismissed. Wilken will attend the trial in person.

II. Record

[5] The record for these applications includes:

- (a) a January 15, 2026 Kosc affidavit (filed February 2, 2026);
- (b) two February 6, 2026 Hamilton affidavits (filed February 9, 2026); and
- (c) a February 18, 2026 Kosc affidavit (filed February 18, 2026).

[6] There was no questioning on these affidavits. The parties both agreed to me reviewing the file for further context.

III. Issues

[7] The issues in this matter are whether to permit Kosc to attend the entire trial remotely from Manitoba and whether to permit Wilken to testify remotely from Montreal.

IV. Analysis

A. Some Context to Electronic Hearings in Alberta

[8] As noted above, the use of technology to allow remote or virtual attendance and testimony in Alberta courtrooms is not a new concept. In 1998, the *Alberta Rules of Court*, Alta Reg 390/1968 was amended to add rule 261.1¹, which provided:

¹ Ontario's equivalent rule, rule 1.08 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194 was introduced in 1999.

Evidence by telephone, audio-visually or otherwise

261.1 On application to the Court and on showing good reason for doing so, the Court may permit evidence to be admitted by telephone, audio-visually or by other means satisfactory to the Court.

[9] By that point, courts were “weighing practicality in the 21st century”: *Alberta Central Airways Ltd v Progressive Air Services Ltd*, 2000 ABCA 36. Our Court recognized that witnesses could testify remotely: *De Carvalho v Watson*, 2000 CanLII 28217 (AB KB) at para 18; *R v Dix*, 1998 ABQB 370. In November 2004, the Alberta Law Reform Institute, as part of the Alberta Rules of Court Project, published a consultation memorandum which reflected a desire to increase use of video-conferencing at trial using rule 261.1: Alberta Law Reform Institute, *Alberta Rules of Court Project, Rules: Trial and Evidence Rules, Parts 25 and 26* (Edmonton: Alberta Law Reform Institute, 2004), as cited in *Sandhu v Siri Guru Nanak Sikh Gurdwara of Alberta*, 2020 ABQB 359 at para 26.

[10] In 2010, the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*) came into force. Under this framework, rule 6.9 contemplates electronic hearings for filed applications; rule 6.10 provides the current framework for permitting electronic hearings; rule 8.10 permits an application to have a trial heard by way of an electronic hearing; and rule 14.73 permits electronic hearings before the Court of Appeal.

[11] Prior to the COVID-19 pandemic, the availability of electronic hearings was contemplated by this Court in other contexts which reflected their acceptance as an option by the Court, but there are few, if any, reported decisions addressing a contested rule 6.10 application: *D’Amico v Wiemken*, 2010 ABQB 785 at para 38; *Abou-Morad v Aboumourad*, 2015 ABQB 584 at para 2; *Deadman v Jager Estate*, 2018 ABQB 985 at para 60; *Nexen Energy ULC v ITP SA*, 2020 ABQB 83 at para 260. Similar rules in Ontario seemed to gain more traction, earlier: see e.g. *Chandra v CBC*, 2015 ONSC 5385; *Davies v The Corporation of the Municipality of Clarington*, 2015 ONSC 7353.

[12] No doubt, technology has continued to improve over time: *Mostafa Altalibi Professional Corporation v Lorne S Kamelchuk Professional Corporation*, 2022 ABCA 239 at para 21, citing *R v Burns*, 2020 SKQB 228 at para 24; *Sandhu* at para 30(8); *R v SLC*, 2020 ABQB 515 at para 105; *R v DMS*, 2025 MBCA 16 at para 83; *R v Mapp-Farouk*, 2020 ONSC 5040 at para 15.

[13] And, as technology improved, academic discussion about electronic hearings followed: see e.g. Anna J Lund, “Litigating on One’s Doorstep: Access to Justice and the Question of Venue” (2019) 56:4 Alta L Rev 1039; Amy Salyzyn, “A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario” (2012) 50:2 Osgoode Hall LJ 429; Helena Gluzman, “Back to the Future: Reviving the Use of Video Link Evidence in Canadian Criminal Courts” (2018) 16:1 CJLT 183.

[14] The COVID-19 pandemic changed everything. It “compelled the use of electronic hearings wherever possible” to provide reasonable access to justice: *AF v DS*, 2022 ABCA 20 at para 33.

[15] This led to the Court’s increasing acceptance and imposition of electronic hearings, and a growing recognition of the utility of electronic evidentiary processes to ensure fair, just and timely resolution of claims in accordance with the foundational rules: *Sandhu* at para 30(8), citing rules

1.2(1) and (2), 1.4(1) and (2)(c), 1.7(2) and 6.10. Initially, this was acknowledged in COVID-19-related “master orders”. The Alberta legal bar also quickly adapted to the use of virtual questioning with virtual questioning protocols.

[16] In January 2021, the importance of electronic hearings was recognized by an amendment to rule 6.10, which provided the Court with the power to direct electronic hearings on its own motion: Alta Reg 23/2021; rule 6.10(2)(b).

[17] The COVID pandemic and the proliferation of remote hearing across Canada spurred significant further discussion in the legal community about the benefits and drawbacks of electronic hearings: see e.g. Suzanne E Chiodo, “Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?” (2020) 57:3 Osgoode Hall LJ 801. In June 2021, a task force of The Advocates’ Society published a report entitled “The Right to be Heard: The Future of Advocacy in Canada” (*TAS Report*), which also touches upon these issues.

[18] In 2022, our Court published hearing guidelines on its website (*Hearing Guidelines*)² which provide general guidelines for default modes of hearing. Similar steps were taken in other provinces: see e.g. *Pleasance v Fairmont Banff Springs*, 2025 ONSC 4728 at para 30; *Schaworski v Unrau*, 2024 MBKB 150 at para 64; Chiodo at 809-812.

[19] The Hearing Guidelines’ general principles state that the default mode for adjudicative/substantive matters is an in-person hearing and for more administrative/procedural matters is an electronic hearing. The default hearing mode for trials is an in-person hearing. The *Hearing Guidelines* remain active. They are not binding on the Court when making decisions under rule 6.10, but the default hearing modes, and circumstances under which the *Hearing Guidelines* contemplate changing the default mode, provide helpful insight.

[20] As illustrated, this Court has been an engaged proponent in facilitating access to justice through electronic hearings. They can work. Our Court readily accommodates remote testimony: *Behiels v Tibu*, 2025 ABKB 178 at para 12. Further, with proper technology and participant training a “virtual trial can be effective”: *Chemtrade Electrochem Inc v Superior Plus Corporation*, 2022 ABKB 858 at para 4, rev’d on other grounds 2025 ABCA 31. That virtual trials can be effective is illustrated by the many completely virtual civil and criminal trials conducted in Ontario since 2020 (as just a few examples, see: *SI Systems Partnership v Geng*, 2020 ONSC 8086 at para 6; *R v Allegro et al*, 2021 ONSC 6138 at para 3; *McKee v Marroquin*, 2021 ONSC 5400 at para 35; *Middle Lake Enterprises Inc v Nyberg*, 2021 ONSC 6206 at para 98; *R v Moolla*, 2022 ONCA 433; *Walsh Construction v Toronto Transit Commission et al*, 2024 ONSC 2782 at para 849).

[21] With that context, I turn to Alberta’s legal framework.

B. The Legal Framework

[22] Rule 6.10 provides:

² <https://albertacourts.ca/kb/court-operations-schedules/scheduling/hearing-guidelines>

Electronic hearing

6.10(1) In this rule, “electronic hearing” means an application, proceeding, streamlined trial or trial conducted, in whole or in part, by electronic means in which all the participants in a hearing and the Court can hear each other, whether or not all or some of the participants and the Court can see each other or are in each other’s presence.

- (2) An electronic hearing may be held if
 - (a) the parties agree and the Court so permits, or
 - (b) on application or on the Court’s own motion, the Court orders an electronic hearing.
- (3) The Court may
 - (a) direct that an application for an electronic hearing be heard by electronic hearing,
 - (b) direct that an application, a streamlined trial or a trial be heard in whole or in part by electronic hearing,
 - (c) give directions about arrangements for the electronic hearing or delegate that responsibility to another person,
 - (d) give directions about the distribution of documents and the practice and procedure at the electronic hearing, or
 - (e) order that an electronic hearing be completed in person.
- (4) The court clerk must participate in an electronic hearing unless the Court otherwise directs.

[23] Rule 6.9 permits applications to proceed by way of electronic hearing. Rule 8.18 allows for trials to be conducted by electronic hearing.

[24] The text of these rules establishes that electronic hearings can be completely virtual or hybrid (with various permutations of which “participants” attend virtually or in person, including counsel, parties, witnesses and the Court).

[25] Given that an application by the parties or the Court is required for an electronic hearing, in my view, the *Rules* contemplate that an in-person hearing remains the default.

[26] This appears reflective of the fact that our system of justice recognizes that the ideal or preferable hearing mode, all other things being equal, involves in-court testimony and personal attendance: *Rovi Guides, Inc v Videotron Ltd*, 2020 FC 596 at para 20; *Guest Tek Interactive Entertainment Ltd v Nomadix, Inc*, 2020 FC 860 at para 27; *R v GM*, 2024 ONCJ 202 at para 20; *Ontario Rules*, rule 1.08(6)(b).

[27] The traditional, in-person foundation of our open court-based adversarial system infuses solemnity, ceremony, seriousness, accountability, transparency, respect and humanity into the court process. Some of these benefits may be lost if accommodations for electronic hearings are made too easily, when parties do not all agree to an electronic hearing.

[28] However, COVID-19 has shown us that the ideal or preferred hearing mode is often not possible, unnecessary, or disproportionate. Virtual testimony and hearings have been accepted as sufficient in many cases, are in some instances the new normal, and are approaching ubiquity: *SLC* at para 31. Courts have consistently endorsed, in both the civil and criminal context, that we can and must embrace new, effective electronic hearing modes, where appropriate in the circumstances: *CS v AJ*, 2004 ABQB 73 at para 34; *SLC* at paras 29-33 (and cases cited therein); *Arconti v Smith*, 2020 ONSC 2782 at paras 19-20.

[29] Although the emergency created by COVID-19 has passed, electronic hearings remain an important tool to serve the court; they should not simply be set aside now: *Scott v Fresh Tracks (Canada) Inc*, 2023 BCSC 1724 at para 40; *Arconti* at para 19; *Kaushal v Vasudeva et al*, 2021 ONSC 440 at para 55; *Schaworski* at para 64; *GM* at paras 24-26.

[30] On the other hand, courts also continue to recognize that “the difference between a virtual and an in-person proceeding is not insignificant”: *R v MZ*, 2026 ONCA 4 at para 55, citing *Woods (Re)*, 2021 ONCA 190 at para 56; *R v KA and ASA*, 2022 ONSC 684 at paras 28-29; *R v KS*, 2020 ONCJ 328 at para 55; *Arconti* at para 40; *WORSOFF v MTCC 1168*, 2021 ONSC 6493 at para 29; *GM* at paras 20-24.

[31] Thus, the *Hearing Guidelines* (and similar guidelines in other provinces) provide default hearing modes for a variety of different types of matters that come before the Court. Those are directed based on the Court’s assessment of best practices and the allocation of publicly-funded available resources.

[32] In my view, if parties do not agree to depart from the default in-person hearing mode, as set out in the *Rules*, the party seeking an electronic hearing (or modified electronic hearing) has the onus to establish, on a balance of probabilities, the need for the proposed form of electronic hearing, that its benefits outweigh its negative effects, that it is proportional, and that it is consistent with the fair and just resolution of the dispute in a timely and cost-effective way in accordance with rule 1.2(1). If the proposed form of electronic hearing is consistent with court directions like the *Hearing Guidelines*, in most cases the burden will be readily discharged. However, a contested application for a modified electronic hearing, that departs from court directions and practice, will often require more detailed consideration.

[33] Rule 6.10 does not provide mandated factors the Court must consider in conducting its discretionary balancing. However, significant guidance is available from past cases, procedural rules and decisions from other Canadian jurisdictions, from the criminal context under the *Criminal Code*, RSC 1985, c C-46, and from academic research or legal commentary. The limitations of cases from the criminal context or under different procedural rules is recognized, but many electronic hearing issues are common to all courtroom settings and we can learn from experience in other contexts.

[34] Contested electronic hearing applications can raise numerous competing or overlapping factors, including access to justice; open court principles; participant preferences; participant characteristics; reasonable accommodation; fostering the truth-seeking function; the integrity court process; effects on hearings; effect on the other participants; proportionality; public interest; and practical considerations.

[35] Without purporting to be exhaustive, and recognizing that courts must engage in a balancing exercise based on specific circumstances, some considerations that have been and may be engaged in the exercise of discretion include:

- (a) Reasons for the Proposed Electronic Hearing: A modified form of electronic hearing is not permitted as of right: *Pack all manufacturing Inc v Triad plastics Inc*, 2001 CanLII 7655 (ON SC) at para 9³; *Sehgal v 628656 Saskatchewan Ltd*, 2025 SKKB 59 at para 8. Contested changes to default hearing modes are not granted as a matter of course. There must be some good faith, reasonable justification for departing from the default hearing mode: *Edmonton (City of) v Lovat Tunnel Equipment Inc*, 2000 ABQB 149 at para 23(2) [*Lovat Tunnel*]; *Scott* at para 44; *Chandra* at para 25, 28(a). Mere convenience will rarely be sufficient unless all parties agree. As noted below, these matters are guided by proportionality;
- (b) Access to Justice: “As the guardians of the rule of law, courts must be open and accessible to everyone all the time”: *Trisura Guarantee Insurance v Duchnij, et al*, 2021 ABCA 78 at para 50, citing various authorities. Access to justice in the context of electronic hearings can be double-sided: Lund at 1064. In most cases, the party requesting the electronic hearing will argue that it is necessary to provide a party or witness with better access to the courts. However, electronic hearings can also act as a barrier to court access for those of limited means, with limited access to reliable internet or technology, or with limited ability to function using technology;
- (c) Participant Preferences: Numerous electronic hearings in a multitude of different forms proceed by consent and courts accommodate them. Courts will put significant weight on the parties’ agreements. On the other hand, courts may be more reluctant to impose electronic hearings on important or substantive matters on parties involuntarily: *Arconti* at para 42; *Real One Realty Inc v Jing Liu*, 2020 ONSC 8190 at para 15. Parties and counsel are encouraged to reach agreement on forms of electronic hearings that work for their cases;
- (d) Nature of the Hearing: The more substantive or final a hearing, the less likely an electronic hearing will be granted; the more procedural and interlocutory, the more likely it will be granted: *Hearing Guidelines*;
- (e) Importance of the Issues: The more important the issues are to the parties, the less quickly the Court should direct a non-default electronic hearing against their

³ In the CanLII version of this case there are two paragraph “[9]”s; the reference is to the second paragraph [9].

wishes. The less the party's interests are at stake, the more likely courts will be willing to depart from strict adherence to traditional modes or hearing;

- (f) Involvement of Counsel. Courts have frequently recognized that the involvement of legal counsel can greatly assist in the facilitation of an electronic hearing: *Chemtrade* at para 4; *Walsh Construction* at para 849. The relevance of counsel involvement is also recognized in the *Hearing Guidelines*. It may be much more difficult for witnesses or self-represented parties to manage technology while at the same time conducting a hearing or testifying. The potential impact of electronic hearings on the ability of a party to instruct counsel may be considered, but those concerns are readily addressable with other messaging technology: *Arconti* at paras 36-37; *Guest Tek* at para 37. The Court is better positioned to address issues that arise, and to facilitate reasonable court access and a fair hearing where the unrepresented party is physically present;
- (g) Participant Relationships. In certain circumstances, the parties or witnesses to court proceedings may have a relationship that warrants an electronic hearing. For example, this has been recognized in the context of families and for victims of crime: *Hudema v Moore*, 2020 BCSC 1502 at para 25; by analogy, see *Criminal Code*, sections 486.2, 714.1;
- (h) Participant Location and Personal Circumstances. The age, physical limitations, mobility, distance from the courthouse, compellability, ability to travel, safety and security may be a factor favouring an electronic hearing or witness testimony: *Hearing Guidelines*; *Ontario Rules*, rule 1.08(6)(f); by analogy, see *Criminal Code*, sections 486.2(3)(a), (b), (e) and section 714.1(a); *DMS* at para 86; *Sanayhie v Durham Regional Police Services Board*, 2025 ONSC 287 at paras 13-16; *R v Hinkley*, 2011 ABQB 567 at para 11. There must be some evidence to support the request: *Hajrizi v Ottawa-Carleton School Board*, 2018 ONSC 2423 at para 12. Although, in the criminal context, factors can be readily apparent, based on counsel submissions, or the pre-existing record: *DMS* at para 91; *SLC* at paras 17-18;
- (i) Participant Roles. In my view, it is more important for parties than witnesses to be in person, as they are the very subject of and reason for the court's involvement. The parties' interests will carry more weight than interests of other participants (witnesses and counsel). Whether the person seeking accommodation is the plaintiff or defendant, and the nature and location of the alleged conduct at issue in the trial, may be relevant;
- (j) Importance of Proposed Remote Evidence. Accommodation of witnesses will depend on the importance of their anticipated evidence to the hearing process and the determination of the issues in the case: *Lovat Tunnel* at para 23(1); *Ontario Rules*, rule 1.08(6)(c); *Aly v Halal Meat Inc et al*, 2012 ONSC 2585 at para 25; *Chandra* at para 24; by analogy, see *Criminal Code*, section 714.1(c). Fringe witnesses, or witnesses dealing with discrete issues, may more readily be permitted to testify remotely. The closer the evidence gets to the core issues in dispute, the more likely the Court will require in-person attendance;

- (k) Financial Considerations. The purpose of our rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way: rules 1.2(1) and (2)(b), 3(a). Cost savings can a significant benefit to electronic hearings: *Scott* at para 46; *Davies* at para 24, citing *Pack all*; by analogy, see *Criminal Code*, section 714.1(b). But financial considerations will not normally alone be sufficient to justify a non-default form of electronic hearing. Further, the cost of implementing the proposed form of electronic hearing should be considered: *Lovat Tunnel* at para 23(2); by analogy, see *Criminal Code*, section 714.1.
- (l) Fostering Reliable Testimony or Meaningful Participation. In some instances, for a variety of potential reasons, providing some witness accommodation may facilitate the witness' ability to provide more reliable testimony, or for a party to exercise its hearing rights: *Sanayhie* at para 15; *Pack all* at para 6. In criminal matters, it has been recognized that witness accommodation is appropriate if the Court is of the opinion that it would facilitate the witness giving a full and candid account by ameliorating impediments and ensuring the witness will be forthcoming and straightforward, in the furtherance of the truth-seeking function: *R v Hart*, 2025 ABKB 730 at para 20 (and cases cited therein);
- (m) Fact Finding and Credibility Assessments. The impact of an electronic hearing on the court's ability to make fact findings and the credibility assessments is important: see, for example: *Ontario Rules*, rule 1.08(6)(d), (e). However, the need to be in person to make credibility assessments is often overemphasized by parties resisting electronic hearings. Courts have consistently rejected attempts to argue that an in-person hearing is necessary for the court to properly assess credibility: *Mostafa Altalibi* at para 19-21; *Pack all* at para 6; *R v JLK*, 2023 BCCA 87 at para 38; *DMS* at para 83; *SLC* at paras 95-106; *Chandra* at paras 19-20. Electronic hearing technology has been recognized to be sufficient, or even superior in some ways, for assessing credibility and demeanour: *Sanayhie* at paras 13-14; *Pack all* at para 14; *Hinkley* at para 17; *SLC* at paras 104-106; *R v Pogachar*, 2022 ONSC 6675 at para 39; *Chandra* at paras 20, 23-24. In any event, courts routinely recognize that demeanour plays a limited role in a credibility assessment: *Mostafa Altalibi* at para 22; *QM v RM*, 2025 ABKB 704 at para 43; *R v Giroux*, 2017 ABCA 270 at para 7; *R v Rhayel*, 2015 ONCA 377 at para 85;
- (n) Maintaining the Integrity of the Evidentiary Process. Electronic witness testimony has long been held to be sufficient to allow a party to confront a witness through cross-examination, even in the criminal context: *R v Allen*, 2007 ONCJ 209 at para 27; *Mostafa Altalibi* at para 21, citing *Burns* at para 24; *R v MRH*, 2019 ABQB 601 at para 16; *KS* at para 50; *R v Carlson*, 2024 BCSC 504 at para 57; *Scott* at para 41; *DLE v Canada*, 2025 FC 471 at para 19; *R v Cardinal*, 2006 YKTC 67 at para 18. However, the Court must be satisfied that a witness testifying through electronic means will not be subject to influence by others, cannot access materials that the court and other participants cannot see, and cannot otherwise undermine the testimonial process: *Arconti* at paras 25-26, 35. These concerns may be manageable through appropriate protocols and efforts to reasonably replicate the courtroom environment: *Miller v FSD Pharma, Inc*, 2020 ONSC 3291 at para 12;

Rovi Guides at paras 13-15; *SI Systems Partnership v Geng*, 2020 ONSC 8086 at Schedule A;

- (o) Level Playing Field. When all participants appear electronically, there is nothing inherently unfair to either side: *Arconti* at para 33; *Miller* at para 10; *Guest Tek* at para 27; *Real One Realty* at para 17. However, rule 6.10 contemplates hearings where some participants are present in the courtroom and others are not. Hybrid hearings where one party is present and the other is not may risk the loss of “personal chemistry” and may create an unlevel playing field or a greater connection between those physically present versus those operating remotely: *Arconti* at para 39; Salyzyn at 447-450. As noted by Lund at 1064, appearing electronically is not the same as appearing in person; a remote participant may feel excluded or may be treated differently in subtle but real ways;
- (p) Hearing Delay. Electronic procedures are more likely to be granted where they are necessary to avoid hearing delay, and less likely where they will cause hearing delay: *Arconti* at para 20; *Stuart v Doe*, 2021 YKSC 11 at para 25; *Guest Tek* at para 20; *Real One Realty* at para 15; *Heustis v Brown*, 2021 ONSC 5053 at para 22;
- (q) Hearing Solemnity. A concern has been raised about whether electronic hearings detract from the solemnity and seriousness of the court process, which can undermine the giving of evidence, respect for the judicial process, public confidence in the administration of justice, and the rule of law: Salyzyn at 456-459; *TAS Report* at 30, 39-40, 44; *Allen* at para 27; *KS* at paras 55-61; *Arconti* at paras 27, 39; *WORSOFF* at para 29. As per Salyzyn at 460: “... in removing witnesses from the courtroom, this technology has the potential to disrupt the power relations that would otherwise be embedded in an adjudicatory process where witnesses physically come to court”. Although these problems uncommonly manifest, in my experience this concern is not unfounded. Court proceedings are serious matters involving the determination and enforcement of legal rights. They are funded by the public. Access to justice must be balanced against the potential dilutive effect of court as a convenient online experience, especially for substantive matters;
- (r) Mischief, Abuse and Privacy Concerns. Virtual presence is susceptible to abuse: *WORSOFF* at para 30. As gatekeepers, it is important for courts to remain vigilant against the risk of fraud and abuse of electronic processes, but abuse should not be presumed: *Arconti* at para 26; *Guest Tek* at para 24. As noted, courts have routinely addressed such concerns with appropriate protocols: *Rovi Guides* at paras 13-15; *DLE v Canada*, 2025 FC 471 at para 21; *Cave v Hovsepyan*, 2021 ONSC 4126 at paras 2-3, 5; *Shafman v Shafman*, 2022 ONSC 5094 at para 4;
- (s) Courtroom Management. Virtual participants still attend court as part of the virtually-extended courtroom. An electronic hearing with an out-of-jurisdiction participant involves the loss of some control over the hearing process, which may affect hearing fairness. It may not be possible to effectively control disruptive or contemptuous behaviour of a remote participant, other than muting them or ejecting them from the electronic hearing. A disruptive witness’ evidence may also be given

less weight: *Pack all* at para 9; *Dix* at paras 10-12. When a participant is within the courtroom, or even the courthouse, the Court can better maintain control over the courtroom;

- (t) Effect on Other Participants. The potential prejudice, harm or inconvenience to other participants, including witnesses, parties and counsel, must be considered: *Archambault v Anstalt*, 2007 CanLII 1337 (ON SC) at para 30; *Rovi Guides* at para 18; by analogy, see: *Criminal Code*, 714.1(g);
- (u) Proportionality. The Court must balance the stated need and benefits of the proposed form of electronic hearing against the effect it will have on the action, the hearing process, and the other participants, to determine if the proposed electronic hearing a proportionate remedy in the circumstances: see e.g. rule 1.2(4); *Scott* at para 45; *The Toronto-Dominion Bank v The Other End Inc et al*, 2025 ONSC 85 at para 29;
- (v) Public Interest. As COVID-19 plainly illustrated, a remote hearing may be in the public interest for public safety or other reasons;
- (w) Feasibility. Practical considerations include ensuring that the remote participants have sufficient technology training; access to court-compatible, reliable technology and internet; and access to a suitable location from where to participate that will be free from distractions and influence: *Ontario Rules*, rule 1.08(6)(a); by analogy, see *Criminal Code*, section 714.1(d).

The logistics of using records and marking exhibits will often be important and can present difficulties in electronic hearings: *Lovat Tunnel* at para 23(3); *Guest Tek* at paras 23, 38; *Chandra* at paras 21, 27, 28(f); *Shafman* at paras 8-11. Availability of court resources may also be a factor: *Lovat Tunnel* at para 23(3).

Time zone, multiple locations and interpreter issues may be relevant: *Guest Tek* at para 32; *Tims v Royal Bank of Canada*, 2022 BCSC 1181 at para 33; *Real One Realty* at para 6; *Kaushal* at para 66(b).

Vague and imprecise proposals, or vague and imprecise concerns with proposals, may be given less weight: *Director of Criminal and Penal Prosecutions v Haghghat*, 2026 QCCQ 705 at para 28; *Guest Tek* at para 24;

- (x) Effective Contingency Plans. To address the possibility that an electronic hearing may not go as planned, courts have considered the availability or practicality of contingency plans to allow an electronic hearing to be converted to an in-person hearing, or to otherwise address unforeseen issues that may arise: *Lovat Tunnel* at para 23(3); *Guest Tek* at para 28. The Court maintains the discretion to revisit its order;
- (y) Other Alternatives. Courts will often consider whether the concerns raised by the applicant in support of the proposed electronic hearing can be addressed in another way that infringes less on the interests of the other parties and the default hearing mode: *Scott* at para 43;

- (z) **Timeliness.** The Court may consider whether the applicant raised the proposed modified electronic hearing in a timely fashion and, if not, whether there a reasonable explanation for any delay. This will be particularly important if any delay in making the request has caused prejudice, harm or inconvenience to other hearing participants or will delay the hearing; and
- (aa) **Cost Consequences.** When addressing proposals for electronic hearings (whether fully virtual, hybrid, or simply for remote testimony), parties are expected to take reasonable, good faith positions in furtherance of the fundamental objectives set out in rule 1.2 (namely the fair and just resolution of the real issues in dispute in a timely and cost-effective way), not positions based on litigation tactics or collateral purposes: rules 4.1, 4.2(a). Taking positions that turn out to be unreasonable or for collateral purposes may result in elevated cost awards or other sanctions.

[36] I turn now to the applications in this case.

C. Should Kosc be Permitted to Attend the Trial Virtually from Manitoba?

1. Positions of the Parties

[37] Kosc is self-represented. She asserts two main reasons for her request to attend the trial remotely.

[38] First, Kosc asserts she has been diagnosed with post-traumatic stress disorder (**PTSD**), which she deposes is as a result of Hamilton’s abuse (the alleged abuse that is a core disputed trial issue). She asserts that attending in court, particularly in close proximity to Hamilton, and in Calgary where she asserts the abuse she suffered occurred, will cause her psychological stress. She has provided a letter from her physician recommending Kosc be permitted to attend trial virtually due to “medical concerns and current social circumstances” and a 2024 letter from a psychiatrist. Kosc also asserts that attending trial virtually would allow her to maintain her composure and focus, to present her evidence clearly, and to conduct effective cross-examination.

[39] Second, Kosc asserts she is suffering financial instability as a result of this litigation and the cost of travel, accommodation and related expenses required to attend the trial in person will cause her significant financial hardship. She has previously declared bankruptcy.

[40] Kosc notes that she has been permitted to attend several applications in this action virtually. She denies that she behaved inappropriately or caused disruption during those attendances, and that her sister was permitted to be with her as a *McKenzie* friend (referencing *McKenzie v McKenzie*, [1970] 3 All ER 1034 (UK CA)). She asserts she has reliable internet (Starlink), appropriate technology to attend by Webex, and a private and quiet environment suitable for court proceedings.

[41] Kosc argues that if Wilken is permitted to testify remotely, fairness and parity dictate she should also be permitted to do so.

[42] Hamilton opposes Kosc’s virtual attendance. He asserts that credibility will be a material issue at trial and a virtual appearance “may limit the Court’s ability to fully observe [Kosc’s] demeanour, responsiveness, and conduct”.

[43] Hamilton deposes, and Kosc acknowledges, that Hamilton has had to bring several applications to move this matter forward to trial.

[44] Hamilton asserts that Kosc's previous virtual attendances have been disrupted by her sister's involvement as well as Kosc's "disruptive conduct" including using the Webex chat function. He also deposes that, during virtual questioning in this matter, Kosc was obstructive and disruptive, at times was laughing, and spoke to her family during breaks (Kosc denies any substantive discussions took place). Hamilton is also concerned about Kosc recording the proceedings or using artificial intelligence during the trial (although he acknowledged there was no evidence of her doing so previously). Kosc did not deny that she had to be muted by the court at least on one occasion. She assured me that she would act maturely and be respectful to the process if she was permitted to attend virtually.

[45] Hamilton questions Kosc's assertion that she has been diagnosed with PTSD, or that there is evidence supporting that she would be triggered attending court in Calgary. Hamilton asserted, and Kosc acknowledged, that she did attend in court at least one time in Calgary in this matter. He suggests that there are other accommodations available to her, including a *McKenzie* friend, access to medical professionals during the trial if needed, longer breaks, or the use of a screen. In response to an inquiry from me, Hamilton acknowledged that the use of CCTV in the courthouse could also be a reasonable accommodation.

[46] Hamilton asserts that technical difficulties were experienced with on-screen sharing of documents during Kosc's virtual questioning. He deposes that there is a substantial number of records in this matter, and that it will impede effective presentation of evidence if Kosc attends virtually. For example, his counsel estimates there are 1,000 text screen shots. Unfortunately, to-date, there has not been any effort made toward putting together an agreed book of exhibits.

[47] Hamilton's position is that parties must attend in person and, even if it is in the Court's discretion to allow Kosc to attend the trial remotely, doing so in this important civil matter where credibility is fundamentally engaged is not appropriate and would set a concerning precedent.

2. Assessment and Decision

[48] I have considered the evidence and submissions of the parties and the relevant factors to my assessment of Kosc's application.

[49] I highlight several factors.

[50] First, Kosc is a party in this action, which in my view brings with it a heightened responsibility to attend a trial in person.

[51] Second, with respect to the financial burden and inconvenience of travelling and staying in Calgary, I am not persuaded that this is a strong factor supporting Kosc's application. Although there is some evidence of Kosc's financial situation in an earlier affidavit, Kosc provided no current details about her current income or budget, or availability of resources. The fact she has previously declared bankruptcy is insufficient. Kosc may be entitled to her reasonable disbursements if she is successful at the trial: *AR v JU*, 2021 ABCA 337 at para 105; *Hicks v Gazley*, 2020 ABCA 239 at para 11.

[52] Third, at least some of Kosc’s alleged conduct that will be the subject of the trial was in or received in, or directed toward Hamilton in, Alberta. Kosc attorned to the jurisdiction and never brought an application challenging that Alberta was an appropriate or convenient forum. She is presumed to have known the default mode of trial in Alberta is in person under the *Rules*.

[53] Fourth, I find Kosc’s medical circumstances to be a legitimate, good faith reason for seeking to attend the trial and testify remotely. In July 2023, this Court previously granted Kosc permission to attend questioning remotely from Manitoba. In the application before me, Kosc provided some details, including records from medical professionals, which inform her belief that she has been diagnosed with PTSD. As this was not a final application, she was permitted to rely on hearsay and has provided the source of her information and belief, substantially (if not completely) in compliance with rule 13.18: *Ingram v Alberta (Chief Medical Officer of Health)*, 2020 ABQB 806 at para 19; *SanLing Energy Ltd v Liu*, 2022 ABQB 767 at para 27; *LC v Alberta*, 2016 ABQB 512 at para 34; *Proprietary Industries Inc v Workum*, 2006 ABCA 226 at paras 8-9. Further, the nature of the parties’ relationship is contested and at the core of the dispute. This Court has accommodated complainants in criminal cases by allowing them to testify by CCTV, including in sexual assault cases: *R v Boucher*, 2024 ABKB 617; *R v Abdulkadir*, 2022 ABQB 174; *SLC*. In my view, these cases are analogous because the underlying truth of sexual assault allegations is a core issue in this matter. If the Court can accommodate witnesses in the criminal context without undermining an accused’s right to full answer and defence (where criminal consequences including liberty are at stake), it can certainly do so in the civil context.

[54] Fifth, on the record before me, I find it likely that Kosc will be better able to provide evidence and conduct her defence on her own behalf if she is not in the physical presence of Hamilton. To be clear, this does not equate to a finding that Kosc’s assertions against Hamilton are true. That is a matter for trial.

[55] Sixth, I am not satisfied that Kosc will have the same difficulty testifying or carrying on her defence if she must attend in Calgary. Kosc has attended court in Calgary previously. As noted, some of her alleged harassing conduct occurred in Calgary. In 2021 she swore an affidavit indicating that she has several friends in Calgary and that (at that time) she “frequents Calgary” and visits those friends. Even if I am wrong on this point, in all the circumstances any impact of her being in Calgary is outweighed by other factors supporting the need to have Kosc present in the Courthouse in Calgary.

[56] Seventh, this case is of critical importance to both parties, and a core issue in this case will be credibility. The trial will involve serious allegations made in online posts, and serious allegations that those posts are untrue and defamatory. The evidence will be of an intimate and personal nature, with Hamilton and Kosc being the only witnesses to testify about what happened between them. While I am satisfied based on the authorities noted earlier, and my own experience, that credibility can be adequately assessed virtually, all else being equal these factors favour in-person testimony and attendance of both parties.

[57] Eighth, I am quite concerned about logistics of Kosc’s proposal for her remote attendance. Kosc’s Webex attendance before me went well, and I am not overly concerned about internet connectivity issues. However, her proposal for how she intends to deal with the many electronic records in this matter is vague and lacking. Further, there is at least some evidence of remote proceedings not going smoothly with her in Manitoba. I am concerned that if things do not go well,

and we need to change approach mid-trial, having Kosc out of the jurisdiction and distant will make it difficult for us to adjust without needing a trial continuation. A contingency plan for the unforeseen or unexpected is better served by having Kosc in Calgary.

[58] Ninth, I am concerned about maintaining the solemnity of the trial, and appropriate control over the trial and the integrity of the evidence-giving process, particularly given the history of challenges experienced in Kosc's remote participation during court attendances and questioning for discovery. Further, there is no legal counsel on her side to assist as an officer of the Court. In my view, I can better maintain control over the integrity of the process if Kosc is in the courthouse in Calgary.

[59] For all of these reasons, I find it appropriate to accommodate Kosc's medical concerns and to increase the likelihood that she will be able to give reliable testimony and carry on her defence, by allowing her to testify and conduct the trial from another room in the courthouse, through CCTV or such other technology as I may approve, under court supervision. This will allow me to best manage the proceedings, ensures a reliable connection, and provides the most flexibility and efficiency should we need to address any unforeseen matters that arise.

[60] I am also aware of the possibility that Kosc may feel excluded or at a disadvantage, with Hamilton and his counsel being in the courtroom with me and her separated from us and only connected via CCTV. By bringing her application, she was clearly willing to proceed in that fashion. However, she may change her mind. Kosc will be entitled to be in the courtroom for any part of the trial. If that happens, it will be easily facilitated as she will already be in the building.

D. Should Wilken be Permitted to Testify Remotely?

1. Position of the Parties

[61] Wilken is a licenced private investigator retained by Hamilton to prepare a "Social Media Investigation Report" (a copy of which is attached to one of his affidavits). Hamilton anticipates Wilken will provide an updated report before trial and he intends to adduce her as an expert witness at trial.

[62] Wilken resides in Montreal and Hamilton deposes that it will be both expensive and inconvenient for her to attend trial in person. He asserts that her credibility is not in issue and that in-person testimony is not necessary.

[63] Kosc refused to consent to Wilken testifying virtually. Kosc asserts that Wilken is paid by Hamilton and her credibility and neutrality will be issues at trial. She argues that fairness and parity require her and Wilken to be treated equally *vis a vis* remote attendance.

2. Assessment and Decision

[64] Wilken is a proposed expert. There is no evidence before me that there was a need to hire a private investigator from Quebec as opposed to one from Alberta. There are no details in the evidence about the cost of having Wilken attend in person, or how long it is anticipated Wilken will be required to attend at the trial. There is no evidence of any particular or unusual inconvenience to Wilken. The application appears to primarily be about cost.

[65] While a request to have a proposed expert attend remotely is often the subject of consent, that is not the case here.

[66] Kosc asserts that she intends to challenge Wilken's credibility and reliability. Normally, as noted above, this could quite readily be addressed through Wilken's remote testimony.

[67] An important factor in this case is the impracticality of having Kosc attending by CCTV or other approved technology from the courthouse, as per my decision above, and Wilken attending by a different remote platform such as Webex. In my view, it would not be workable, or fair to Kosc, to have Kosc cross-examine Wilken, potentially using various records, through the filter of two different electronic processes at the same time. I do not believe there is any effective or fair way to do accommodate this using the Court's current resource capabilities.

[68] For these reasons, Hamilton's application is dismissed.

V. Conclusion

[69] Kosc is permitted to attend the trial electronically from a different room in the Calgary courthouse as approved by the Court. Wilkin shall testify in person.

[70] Costs of these applications is deferred to be dealt with after the trial.

[71] There remain logistical matters and protocols that need to be addressed with the parties. The Court will be contacting the parties to schedule another pre-trial meeting as soon as possible for that purpose.

Heard on the 23rd day of February, 2026.

Dated at the City of Calgary, Alberta this 24th day of March, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

Lisa Handfield
for the Plaintiff

Charlotte Kosc
Self-represented litigant