



The Advocates' Society

The future of advocacy and work arrangements 'post'-pandemic: Perspectives of young advocates

April 2022

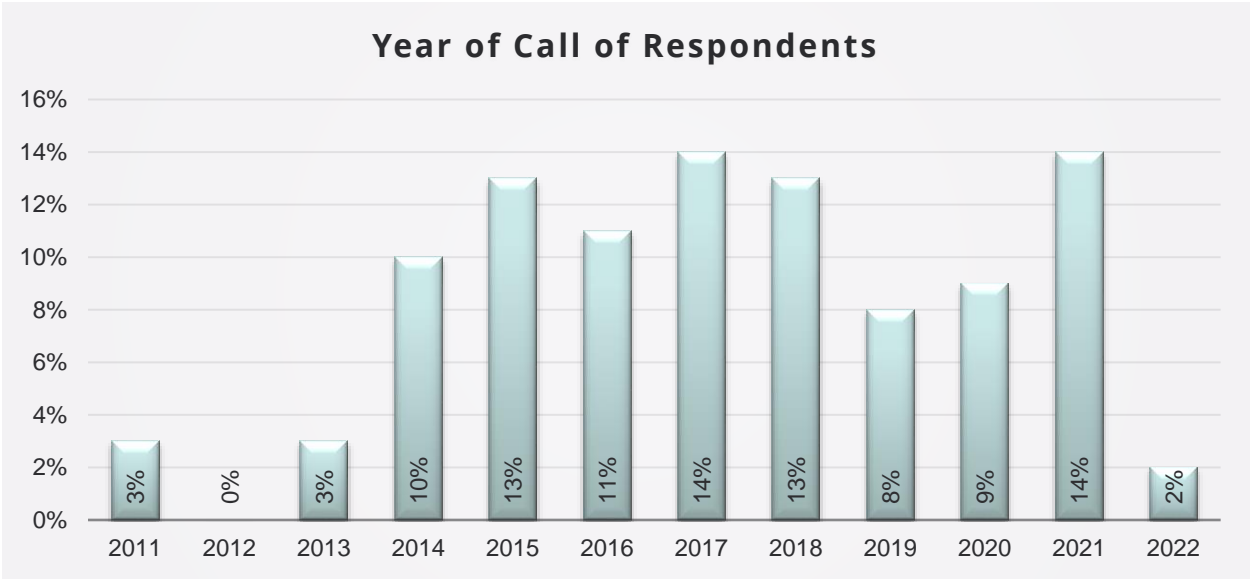


Introduction

For many advocates across Canada, the COVID-19 pandemic has fundamentally changed their working environments and means of delivering legal services. Some of these changes have been particularly acute for young advocates, many of whom have embarked on their legal careers in a virtual world.

As legal organizations grapple with what a return to 'normal' will look like, members of the Young Advocates' Standing Committee (YASC) of The Advocates' Society have sought to understand how young advocates (10 years of call or less) are thinking and feeling about this return. Should we all revert back to the way things were before the pandemic? Or has COVID sparked new ideas and new ways of working that we should maintain and expand?

To help answer these and other questions, YASC developed a survey for young advocates about the future of advocacy in the (dare we say it?) 'post'-pandemic world. Beginning in Fall 2021 and culminating in early 2022, YASC interviewed or surveyed more than 220 young advocates. Respondents hailed from across Canada, and the vast majority of them were called to the Bar between 2014 and 2021. Approximately 85% of respondents currently work in private practice, with the remaining 15% working in government, in-house, or legal clinic positions.



The more than 220 responses were carefully analyzed and are fascinating and informative. Although the responses reflect a diversity of views and lived experiences, 10 key takeaways emerged and have been summarized in this report.

Our hope is that leaders of legal organizations and the legal profession in Canada will carefully consider the perspectives of young advocates when making decisions about the future of advocacy, legal practice, and working environments more generally. Recognizing and responding to these perspectives will, in our view, improve work satisfaction and performance, enhance mental and physical health, and ultimately increase the retention of young advocates in the profession.

**Key takeaway #1:
Flexible work arrangements are preferred**

Question: "In terms of working remotely vs. working from the office, what is your ideal work setup personally?"

A majority (56%) of the young advocates surveyed indicated that a "blend of working from home and working from the office" is best. By contrast, 24% of respondents indicated that they prefer "mostly working from the office", while 20% indicated that they prefer "mostly working from home".

When asked to explain their preference, many young advocates highlighted the benefits of blended work environments that permit some work from home. One respondent wrote that, "*[a]s a junior lawyer, I appreciate having some time back to myself by being able to work from home. I think it is helpful for mitigating the effects of burnout in the profession, and likely has improved private practice retention.*"

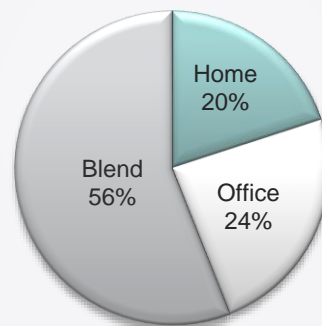
Another respondent emphasized that working from home has both positive and negative attributes, thereby enhancing the importance of a blended approach:

The [home] environment feels less stressful, and there are a number of efficiencies and comforts associated with working from home that I think are very positive. I eat more nutritiously because when I have a moment I can walk to the kitchen and prepare something that isn't food court takeout. I can get a little extra sleep,

not worry about my appearance too much and sit down to work. However, working remotely felt more difficult in the long dark winter days when a change of scenery feels really necessary. That's the main reason I believe a mix is most appropriate.

With a strong majority (76%) of young advocates preferring a blended or work-from-home model, legal organizations should be hesitant to mandate a full return to the office. From the perspective of most young advocates, flexibility is crucial. Such flexibility will allow individuals to structure their work environment in a way that is most conducive to their own successful work production and well-being.

In terms of working remotely vs. working from the office, what is your ideal work setup personally?



Key takeaway #2:

Despite a desire for flexibility, the office remains an important place

Question: "In terms of working remotely vs. working from the office, what is, in your view, the ideal work setup for your team or organization as a whole?"

This question saw a shift in responses from the question about personal preferences. Only 9% of young advocates responded that "mostly working from home" is best for their team or organization as a whole. 26% indicated that "mostly working from the office" was preferable, while 65% indicated that the best approach for their team or organization is a "blend of working from home and working from the office."

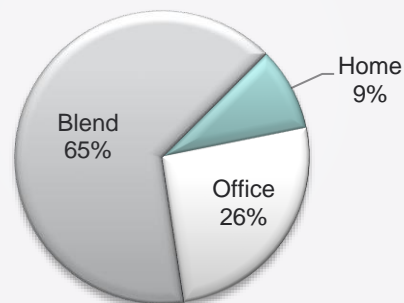
What these responses demonstrate is that when asked to consider the well being of their team or organization, 91% of young advocates are of the view that the office remains an important place, at least to some degree. As a result, the first key takeaway is subject to an important caveat: flexibility is good, but the office still has an important role to play when it comes to infrastructure and technology, fostering feelings of collegiality and belonging, and mentorship (both formal and informal).

Many young advocates highlighted the benefits of an office or in-person environment. Some comments we received were:

- *"I miss the collegiality and learning that takes place in-person with and from colleagues."*
- *"Outside of the office there is less collaboration and I feel less connected to my team."*
- *"I am more comfortable working from home ... [but] I enjoy the supports (people and tech) in the office."*

This second key takeaway emphasizes that flexible work arrangements must still account for the significant benefits of in-person collaboration, in-office technology and practice supports, socializing, and teamwork. These benefits can be particularly powerful for young advocates at the start of their careers.

In terms of working remotely vs. working from the office, what is the ideal work setup for your team or organization as a whole?



Key takeaway #3: Mentorship has suffered during the pandemic

Questions: What do you miss about the pre-pandemic practice of law? What have you not enjoyed about remote working?

Respondents consistently reported that the virtual work environment has significantly undermined effective mentorship and lessened the collegiality of their work environment.

The pandemic has undeniably taken a toll on the level, quality, and amount of mentorship young lawyers are receiving. When asked what they missed about practising law pre-pandemic, many young advocates replied that working remotely has put a strain on access to more senior lawyers, whereas prior to the pandemic, being in the office created daily opportunities to run into a mentor, or pop into their office to discuss a file. During the pandemic, mentorship has become much less organic, requiring scheduled calls and meetings with people you may not have seen in-person for months (or ever, depending on when you started practising).

While young lawyers must develop their own critical thinking and problem-solving skills as they transition from students to licensees, one respondent's comment that they "*have not enjoyed the lack of mentorship and difficulty in getting direction or oversight on files,*" is echoed by many of their fellow young advocates. Another new call described the impact a lack of mentorship can have at this critical stage of a lawyer's career:

I believe that we are lacking the type of hands-on mentorship that is critical in the early phase of our careers. Remote work has its advantages in terms of lifestyle, but there is a lack of ability to really see how senior lawyers practice and how to emulate some of this in our own practices. Simply being around other lawyers leads to discussions that not only assist in finding answers to tough legal questions, but it furthers our development by training our minds to think of certain things that we would not consider given our limited experiences.

Having easy access to mentors and more senior colleagues is important for young lawyers, particularly in the first few years of practice. There are now at least two

years' worth of young lawyers who have completed their articles and entered the profession under some form of full- or part-time work from home policy. The effects on young advocates this reduced access to formal and informal mentoring with more senior counsel remains unknown, but as we continue practising law during a global pandemic, it is vital that employers and leaders within the legal profession take steps to ensure students and new members of the Bar are given access to the mentorship relationships they need, want, deserve, and may have been missing because of COVID-19.

Key takeaway #4:
Virtual Advocacy has its benefits

Questions: What do you not miss about the pre-pandemic practice of law? What have you enjoyed about remote working? As we transition back to more in-person work, what types of advocacy do you think should still proceed virtually in some cases?

Many respondents praised the transition to virtual advocacy that was necessitated by the pandemic. In recognition of the benefits of virtual advocacy, young advocates identified several types of advocacy that they felt should continue to proceed virtually, even after the pandemic ends. These included questioning / discoveries (67% of respondents), applications and motions (69% of respondents), and pre-trial conferences (72% of respondents).

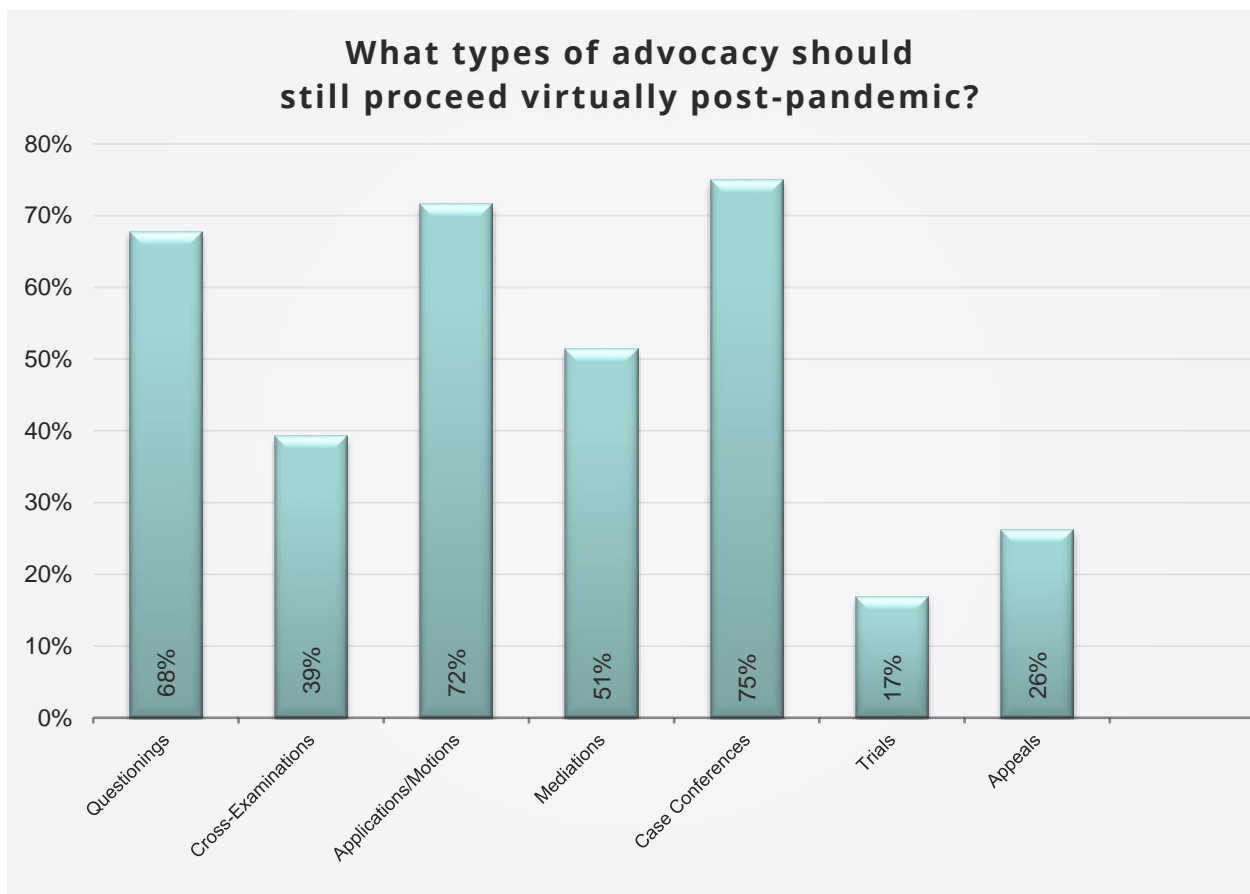
A number of young advocates described the significant amount of time they have saved over the last two years by not having to travel for work or commute between court houses and court reporter's offices. Others described the benefits of not "*lining up at the courthouse*" and "*losing hours for a 5-minute motion*". Virtual proceedings have translated into greater efficiency, more personal time, capacity to work on other files, as well as noticeable cost savings for clients. Other respondents described how effective virtual advocacy can be — particularly for shorter, non-contentious or procedural matters.

One young advocate noted that virtual hearings and Court appearances are "*somewhat less intimidating*" than in-person proceedings as "*Zoom eliminates physical concerns about when and where to stand, sit, etc. and who is who in the courtroom.*" Several respondents also noted that they have enjoyed that virtual advocacy is

typically more relaxed, and they have appreciated not having to wear full suits or robes for all of their appearances.¹

A number of young advocates described feeling pleased with how virtual advocacy has generally been embraced by the profession, and how the comfort level of most people with platforms like Zoom seems to have increased. It was also noted that COVID has, at least for now, done away with some individuals' "insistence on everybody being in-person and the lack of options for remote attendance."

Virtual advocacy may have taken some time to get used to and is clearly not for everyone (see the next key takeaway), but for many young advocates, the transition to and rise in popularity of electronic hearings and court appearances has had an undeniably positive impact on their lives and practices.



Key takeaway #5: Virtual Advocacy has its drawbacks

Questions: What have you not enjoyed about remote working?

The transition to virtual advocacy has also presented challenges and a steep learning curve for many young lawyers. Many respondents described how virtual advocacy indisputably has a role in the future of the profession, but that it is not a perfect substitute for in-person appearances, which can offer junior lawyers more exposure to different advocates and their personal advocacy styles. In-person appearances also provide young advocates with the opportunity to expand their professional networks when meeting and spending time with opposing counsel and members of other firms and organizations.

Based on the responses received, the more complex and adversarial the hearing or proceeding, the more young advocates wish to see it conducted in-person. This sentiment is exemplified by the fact that only 16.8% of respondents think trials should continue virtually, only 26.2% of young advocates think appeals should remain Zoom-based, and 39.3% think virtual cross examinations are here to stay. Interestingly, when it comes to mediations, there was a near-even split amongst respondents on how they ought to proceed post-pandemic, with 51.4% of young advocates suggesting this alternative dispute resolution mechanism should continue to proceed virtually. Based on these response figures, it appears that young advocates tend to support a return to in-person advocacy for hearings requiring more active involvement between other counsel, triers, parties, or witnesses.

Many respondents noted that they have made submissions in court virtually but feel that it is not the same as an in-person appearance, and that a different skill set is required to be an effective *virtual* advocate. In this vein, virtual advocacy was explained by one respondent as having "*its place and [being] useful for many things, but it is not a complete substitute and even if it is a substitute, there are latent costs we are not appreciating (networking, business development, etc.).*"

When it comes to virtual advocacy, the perspectives of young advocates appear to be in alignment with the views expressed by The Advocates' Society's Modern Advocacy Task Force in its June 2021 Final Report, *The Right to be Heard: The Future of Advocacy in Canada*. However, there does appear to be an enhanced openness

among more junior members of the Bar to continued virtual advocacy for at least some portions of the of dispute resolution process.

Key takeaway #6:

Young parents have been uniquely affected by the pandemic

Though our survey did not specifically address parenting during the COVID-19 pandemic, in reviewing the responses, numerous references to both the pleasures and pressures of balancing child rearing and family responsibilities with professional obligations were noted. From the responses, it is evident that young advocates who also have parental obligations have faced unique challenges throughout the pandemic associated with managing their obligations to their families and to their clients.

Some young advocates noted that work from home policies have removed their commute, thereby allowing them to spend more time at home and with their young children. As one respondent highlighted *"morning routines with my child are easier working from home."* As such, the pandemic and virtual working environments have enabled some lawyers to maximize time with their families, where before the pandemic they would have been in transit or away from their homes for extended periods of time each day.

However, not all respondents with young children have found working from home to be a positive experience. Some respondents described the tension and challenges they have experienced while parenting and striving to build their careers and practices during the pandemic, which often leads to more work during the evenings and on weekends. In particular, one respondent described having *"enjoyed seeing my son more [while working from home]. However, as work expectations returned to normal, I did not enjoy having him around as a distraction."* Another respondent stated:

I can't underscore enough how miserable it has been to be a parenting lawyer during the pandemic. We are 'lucky' to be able to work from home, but our home is full of kids, there is next to no additional support, and the work demands haven't relented.

A third respondent also lamented that:

Parenting kids during the pandemic has been miserable and difficult. WFH [work from home] is making that slightly easier but obviously work is constantly interrupted. I have enjoyed not having to get dressed up all the time, but I'd trade that any day to get back to in person.

While a fourth young advocate described how “*there is nothing I don't enjoy about working remotely*”, although they noted that they might feel differently if they had kids or pets to care for.

Based on this spectrum of replies and lived experiences, it appears that parenting and working from home during the pandemic have been a struggle for many young advocates and may be something their non-parent peers have observed, albeit second-hand. It is important that employers and leaders of the legal profession consider and implement measures to ensure lawyers who are also parents or caregivers are not more susceptible to burnout than their peers simply because their home has also become their office.

Key takeaway #7:

Remote working has increased the use of technology in the practice of law (and that's a good thing!)

Our survey did not specifically ask young advocates to describe whether the pandemic has prompted them to increase the use of technology to practise law, but many respondents mentioned it when responding to a question about what they have enjoyed about remote working.

In March 2020, many organizations and law firms, not to mention the Courts, closed their doors and sent the majority of their employees home to work remotely. In a matter of days, many legal professionals lost regular access to their offices and the technology and supports on which they had come to rely. Courts across Canada were also required to create or improve their existing electronic filing systems and arrange for proceedings to take place virtually.

While the transition to working remotely, attending virtual meetings, going (mostly) paperless, and having to create a long-term home office space presented challenges for most of us, two years into the pandemic, many young advocates described how COVID-19 forced their employers to explore and embrace new technologies. Respondents also described how the increased use of programs like Zoom and Teams has generally been beneficial for them and their clients.

Several respondents did note that mobile devices, new technologies and platforms like Zoom and Teams are only helpful when they work, and that having access to support when technical issues arise is important to them and their practise; however, the technologies' benefits outweigh the occasional headache associated with a dropped call or audio/video glitch.

Several young advocates praised the increased use of technology occasioned by the pandemic for increasing efficiency and resulting in cost savings to their clients. A number of respondents also described how remote working and the ability to video conference with clients, opposing counsel, and decision makers has "*leveled the playing field*" and enabled them to participate more fully in matters taking place in other jurisdictions. The increased use of electronic filing systems across the country was also applauded by many respondents, who described not having to file hard copy documents with the Courts as one of the things they enjoy most about practising law during COVID. Some respondents also described that their work from home set-ups (monitors, keyboard, etc.) are superior and more comfortable to their office workstations.

Key takeaway #8:

Young advocates support vaccination policies and other safety protocols

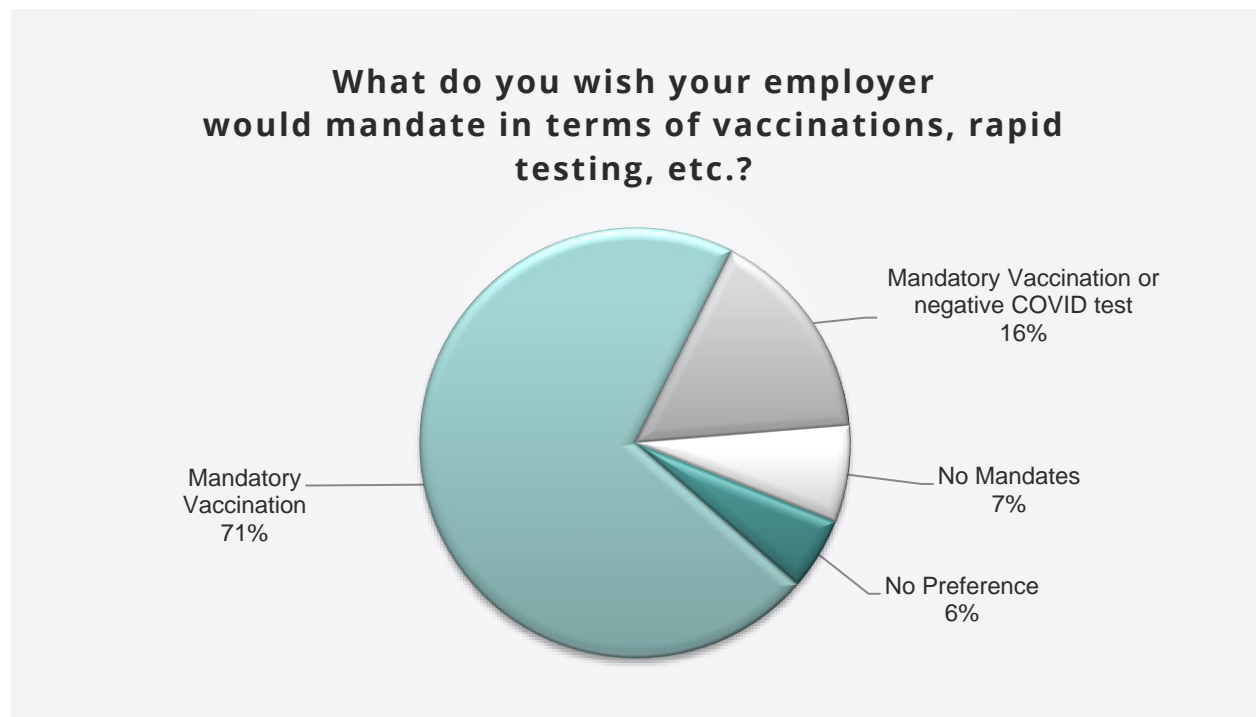
Questions: What is your employer currently mandating, or planning to mandate, in terms of vaccinations, rapid testing, etc.? What do you wish your employer would mandate, if anything, in terms of vaccinations, rapid testing, etc.?

Based on responses received, young advocates across the country have overwhelmingly indicated a desire to have protective policies in place when and if they return to the office. A clear majority, 71.8% of young advocates surveyed,

indicated that they wish their employer would implement vaccination mandates within the office. Another 15.3% of respondents noted that they wish to see policies requiring either mandatory vaccinations or negative rapid testing results before entering the office. Only 6.9% of respondents indicated that do not want mandatory vaccination or rapid testing policies instituted within their workplace.

The opinions of the young advocates we surveyed appear to generally align with the current measures (as of the time of writing) implemented by their respective employers, as 62.6% of respondents' employers already have implemented (or are planning to implement) vaccination mandates prior to a formal return to the office, 11.3% have instituted policies requiring either employees be vaccinated or have a negative rapid test result, and only 8.6% have no mandate or testing policy. Approximately 9.9% of respondents were unsure of their employer's current policy, or future COVID-19 office health and safety polices.

It is apparent that the majority of junior lawyers are thinking about health and safety and COVID-19 prevention if and when they return to the office with any regularity. It is also clear that for the most part, their employers are taking the health and safety of their employees into consideration as return to work polices are being developed and unveiled across the country.



Key takeaway #9:

Work from home has affected physical and mental health both positively and negatively

Questions: What have you enjoyed about remote working? What have you not enjoyed about remote working?

When asked to describe what they have enjoyed and not enjoyed about working from home, many respondents noted the impacts of remote working on both their mental and physical health.

For a number of young advocates, working from home has given them greater flexibility during the workday to take breaks or work out, cut down on their concerns about physical appearance and dress, and enabled them to get more sleep. Others noted that they have felt empowered to start work at a time that suits them and their lifestyle and enjoy no longer feeling pressured to put in “face time” at the office. Several respondents described that working remotely has afforded them more time at home with their families and pets. While not universal to all respondents, this was generally viewed as a positive development. Lastly, a popular response described how spending more time at home equated to having more time to cook, which has resulted in less money spent eating out and generally healthier eating habits.

One young advocate noted that they have *“enjoy[ed] saving time and money, being comfortable, and maintaining a healthy lifestyle”* since 2020. Another described how *“the privacy, solitude, psychological and physical comfort [of remote working], time and energy saved in transit, control over my environment, reduced stress, better work-life balance, and increased productivity”* has had a positive impact on their life. Another respondent noted that their work from home environment *“feels less stressful... I eat more nutritiously because when I have a moment I can walk to the kitchen and prepare something that isn’t food court takeout. I can [also] get a little extra sleep”*.

On the flip side, many young advocates responded that they have found the last two years working from home lonely and described experiencing feelings of isolation. One respondent noted that they *“miss being a functioning human that actually does stuff instead of sitting behind a computer for 12 hours per day.”* Some young advocates miss in-person work and connecting face-to-face with their colleagues and mentors. Several respondents also described suffering from ‘screen fatigue’ and have found it

more difficult to focus when working from home versus working in the office. As further described in the tenth key takeaway, many young advocates have struggled with setting boundaries and carving out time away from their desks. One respondent described missing *"respectful communication and cognizance of real work life boundaries. As we are all working from home it feels like we are on call 24/7, particularly if you do not have children."* While another found that their *"body physically hurts more when working from home. My home office chair isn't as ergonomically appropriate. Also, I believe I move around less in a day."*

Remote working has definite advantages for many young advocates, but the challenges and negative impacts associated with self-isolating and living and working in the same space should not be ignored. Many of the concerns expressed by young advocates in response to this question underscore the need for flexibility and hybrid work models moving forward.

Key takeaway #10:

Work from home has blurred the line between work and personal time

Our survey did not specifically ask young advocates about setting boundaries and carving out personal time when working from home; however, many respondents raised this issue when describing what they miss about the pre-pandemic practice of law and what they have not enjoyed about remote working.

While some young advocates feel that working from home has enabled them to set their own schedules and prioritize their health and well-being, others have struggled to set boundaries with their employers and clients and have found that the *"lines between personal time/work time have been blurred."*

One respondent noted that *"I have not enjoyed how remote work has made it more difficult to separate work from home life and create that vital mental and sometimes physical space needed to maintain better mental health and mental hygiene."* Other young advocates described how they and many of their more junior colleagues do not have designated home offices, which can be "taxing". Instead, their living rooms, kitchens, or bedrooms have been commandeered by remote work set-ups, which has reduced their living space and makes disconnecting from work more challenging.

I have not enjoyed the lack of separation between work and home and losing my kitchen table to my office set up, the assumption (presumption) that because I am home, I am available to work and respond to calls/emails.

Many respondents described feeling as though they need to be online or available to their colleagues and clients 24/7 and noted that it is not uncommon to receive emails late into the night. As a result, there is no “*natural end to the workday*” and many young advocates are left wondering when and how they can truly disconnect.

With many young advocates living and working in smaller spaces (which they may or may not share with roommates or family), disconnecting from work at the end of each day and on weekends and holidays is more difficult than ever. Employers in particular need to be mindful that many of their more junior colleagues are tired, lonely, feeling isolated, and may be unsure about when and how often they are expected to be online and available. It is incumbent on employers and decision-makers within the legal profession to set boundaries for themselves and their more junior colleagues, use delayed delivery features when sending late-night emails, and otherwise encourage young advocates to take time away from their desks and computers. Legal careers can be busy, but in order for them to be long and rewarding, health, interpersonal relationships, and mental well-being must come first.

Conclusion

The pandemic has forced advocates of all levels of seniority to reconsider the way we have historically delivered legal services. As we collectively define the new ‘normal’, we have a significant opportunity to foster work environments and a community of advocates that is healthier and happier, while also being more adaptable, efficient, and resilient.

Based on the responses we received to this survey, simply reverting back to pre-pandemic work arrangements, rigid in-office attendance requirements, and other practices are not the best path forward. Enhanced workplace flexibility should be provided, in tandem with concerted efforts to increase mentorship opportunities and relationships, collaboration, and teamwork. New technologies and devices that

enable lawyers to work nimbly and paper-free should be embraced and adopted. These innovations will not only make us more efficient but improve client service, generate business (and therefore, revenue), and increase access to justice. Lastly, leaders of the legal profession owe it to all members of the Canadian Bar to seek out and consider the voices of young advocates and implement their ideas and suggestions if meaningful, lasting change is to be achieved. The COVID-19 pandemic highlighted many of the legal profession's antiquated practices and inefficiencies, and the fact that necessity is truly the mother of invention (or, in this case, modernization). The time for fresh perspectives and new ways of doing things is now, and who better to opine on these subjects than the newest members of the profession?

Our final interview or survey question asked respondents to provide any tips they may have for young lawyers based on their experience working during the pandemic. We received a great deal of excellent advice and wish to close by sharing some of that guidance:

- *The pandemic has taught us that we should always be adaptable. You should not be afraid about pushing for changes that will ensure your working environment and the justice system work for you, your peers, future peers, and your clients. Being a young lawyer is not an impediment to instigating change. If anything, you are best positioned to advocate for it.*
- *Learn to truly disconnect after a day's work, even if working from home. You are more than just your work or your position at work, and it is important to cultivate your life outside of work.*
- *Use screen sharing effectively in hearings. I have found that forcing a decision maker to look at a key piece of evidence or important case has been very effective – without worrying that they are flipping to the wrong page!*
- *Don't hesitate to reach out to your colleagues for assistance and guidance! Sending an email or instant message, or picking up the phone, can feel more intrusive than just popping by someone's office, but it is no less important.*
- *Invest in ergonomically sound office furniture at home to preserve your health; reach out to work colleagues more than feels natural to stay in touch; embrace technology in your practice to make it more efficient and effective.*

This document was written and edited by the following members of the Young Advocates' Standing Committee:

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Endnote

¹ Authors' note: This report was drafted prior to the release by different courts of protocols for virtual hearings that address questions of virtual courtroom attendance etiquette, such as Chief Justice Morawetz's March 17, 2022 video recording announcing the Ontario Superior Court of Justice's 'Guidelines To Determine Mode of Proceeding' in Civil, Criminal, Family and/or Small Claims Court and Virtual Courtroom Etiquette guidelines.



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