

TECHNOLOGY-ENABLED LEGAL SERVICE DELIVERY FOR OLDER ADULTS: WHAT CAN LAW LEARN FROM TELEHEALTH? FINDINGS FROM AN INTERNATIONAL REVIEW OF LITERATURE

Nola M Ries, Briony Johnston and Shaun McCarthy*

I INTRODUCTION

Australia, like many industrialised countries, is experiencing two major, unprecedented social phenomena: the ageing of the population and rapid advances in information and communication technologies (ICTs). Both have implications for legal service delivery. Much has been written on how the ubiquity of web-connected computers and mobile devices will transform legal service delivery, vastly expanding ways for lawyers to connect with people who need legal help, extending the reach of not for profit legal assistance providers, and making legal proceedings more accessible and convenient.¹

But what promise does technology hold for improving access to legal services for older adults in order to help meet their particular needs?² Technology is already transforming health service delivery with telehealth initiatives that use ICTs to connect health professionals with older adults who would otherwise face barriers in accessing care. Similar to telehealth, lawyers can use video or webconferencing technology to deliver legal help, including one-to-one consultations and community legal education targeted to the needs of older people.

Our aim in this paper is to identify lessons learned from telehealth that can inform the development of ‘telelaw’, technology-enabled access to legal assistance. We focus particularly on the use of technology to help surmount the barriers for older people due to factors such as mobility limitations, social isolation, geographic isolation, and socio-economic disadvantage. First, we discuss the legal needs of older adults and elaborate on the value for the legal sector in looking to telehealth and its use of new technologies to meet the needs of underserved populations. Based on a literature review that is international in scope, we next present research findings on the uptake of and satisfaction with video or webconferenced telehealth services. This analysis challenges assumptions that may exist, for example, that older people resist the use of technology or that technology-enabled services are inferior to in-person services. We identify key lessons from telehealth that can be applied to inform

* Nola M Ries is Senior Lecturer and Deputy Head, University of Newcastle Law School; Briony Johnston is a Sessional Academic and Research Assistant, University of Newcastle Law School; Shaun McCarthy is Director, University of Newcastle Legal Centre and Convenor of the Professional Practice Program.

¹ For example, see James E Cabral et al, ‘Using Technology to Enhance Access to Justice’ (2012) 26(1) *Harvard Journal of Law and Technology* 241; Tania Sourdin, ‘Justice and Technological Innovation’ (2015) 25 *Journal of Judicial Administration* 96. Governmental bodies also urge the use of technology, where feasible, to enhance cost-effective access to justice: Australian Government, *Access to Justice Arrangements – Inquiry Report* (December 2014) Productivity Commission <<http://www.pc.gov.au/inquiries/completed/access-justice/report>>.

² For the purpose of this article, an older adult is over age 60. We use this age as the health literature reviewed included people from age 60 in studies of use of telehealth services.

the design, delivery and evaluation of telelaw services and offer some practical suggestions for facilitating access to telelaw services for older clients. Finally, we emphasise the importance of careful evaluation of telelaw projects to develop the evidence base in this emerging field.

The Legal Needs of Older Adults

Australia's population is ageing with large increases anticipated over the next fifty years in the number of older Australians.³ It has been reported that “[a]lthough most types of legal problems are less prevalent among older people [including legal problems related to criminal activity, rental housing, credit and debt, child and family disputes], some types of legal problems are relatively common in this age group. In particular, past research has found that wills, estates and power of attorney issues are common in the older age groups.”⁴ Statistics from Law Access New South Wales, a free statewide telephone service that offers legal information and referrals, show a significant proportion of legal matters related to elder law.⁵ Likewise, the Seniors Rights Service, a community legal centre that provides advocacy, legal advice and education to older people, reports that powers of attorney and wills and estates represent the greatest portion of issues recently raised by clients, followed by guardianship and financial elder abuse queries.⁶ Current State and Commonwealth governmental inquiries highlight the serious issues of abuse, especially financial abuse, experienced by older Australians and the need for legal services to help deal with these problems.⁷

Older adults may experience barriers in accessing legal services.⁸ They may not recognise that a problem is a legal issue capable of legal resolution⁹ and, attitudinally, “might be more likely to ‘put up with problems’ as part of life, have higher tolerance levels and a greater degree of stoicism.”¹⁰ Some older people may perceive that lawyers are disinterested in their legal concerns¹¹ and there

³ Around 3.4 million Australians are aged 65 and older, a three-fold increase in fifty years, and nearly 460,000 are aged 85 and over, a nine-fold increase. Australian Institute of Health and Welfare, *Ageing* (2015) <<http://aihw.gov.au/ageing>>.

⁴ Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (2012) Law and Justice Foundation of New South Wales, 173 <[http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)>.

⁵ LawAccess NSW CRM data. Personal communication by Shaun McCarthy to NSW Department of Justice (7 March 2016). Data reported is from February 2015 to February 2016.

⁶ Personal communication by Shaun McCarthy to the Senior Rights Service (2 March 2016). Data reported is from June 2015 to January 2016.

⁷ General Purpose Standing Committee No 2, Parliament of NSW – Legislative Council, *Inquiry into Elder Abuse* (2015) <<https://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/9C048DFE66F02D36CA257EB30081BF4A>>; Rae Kaspiew, Rachel Carson and Helen Rhoades, *Elder Abuse: Understanding Issues, Frameworks and Responses* (February 2016) Australian Institute of Family Studies <<https://aifs.gov.au/publications/elder-abuse/1-introduction>>.

⁸ Sarah Ellison et al, *Access to Justice and Legal Needs: The Legal Needs of Older People in NSW* (December 2004) Law and Justice Foundation of New South Wales <[http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/\\$file/older_law_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/6FFEB98D3C8D21F1CA25707E0024D3EB/$file/older_law_report.pdf)>.

⁹ A legal problem refers to “a problem that is ‘justiciable’ in that it raises legal issues with the potential for legal resolution.” See Hugh M McDonald and Zhigang Wei, *Justice Issues Paper 23: How People Solve Legal Problems: Level of Disadvantage and Legal Capability* (2016) Law and Justice Foundation of New South Wales, 1 <<http://www.lawfoundation.net.au/ljf/app/&id=4752B67A5D6A030FCA257F6A0004C3C5>>.

¹⁰ Alexy Buck, Nigel Balmer and Pascoe Pleasence, ‘Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups’ (2005) 39(3) *Social Policy & Administration* 302, 317.

¹¹ Susan Edwards and Antonia Fontana, *Legal Information Needs of Older People* (2004) Law and Justice Foundation of New South Wales, iv <[http://www.lawfoundation.net.au/ljf/site/articleIDs/9D9D131462B745E0CA257060007D1408/\\$file/legal_info_needs_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/9D9D131462B745E0CA257060007D1408/$file/legal_info_needs_report.pdf)>.

may be a “sense of fear, mistrust, uncertainty and ambivalence among older people towards accessing legal advice.”¹²

Residents in rural, regional and remote (RRR) areas, which tend on average to be older than urban populations, face unique problems. Research consistently identifies this population as having particular vulnerability to legal problems, a lack of capacity to resolve legal problems on their own and limited access to professional legal services.¹³ For older adults, legal problems can arise in matters that include

the complexity of assets held by families resident in rural areas such as farming properties; lack of access to services that may assist with asset management arrangements and responses to situations where elder abuse is occurring or expended; and the dynamics involved in reporting or disclosing elder abuse in rural communities, where shame and concern to protect the family name potentially play an inhibiting role.¹⁴

More remote areas of Australia have the highest ratio of residents to solicitors, those solicitors are more likely to be young and inexperienced, and legal aid services and community legal centres may not cover all areas of law that are particularly relevant for older persons.¹⁵ Limited access to transport in rural and remote areas together with mobility restrictions for some older people compound the barriers they face in seeking legal assistance in a timely way.

Sage-Jacobson asserts that older adults experience “a distinct disadvantage in access to justice. ...the evidence does show that older people face particularly strong barriers to gaining legal assistance and achieving satisfactory resolution compared to other Australians.”¹⁶ So how can technology help?

Brescia and colleagues contend that technology-driven innovations in legal service delivery will develop from those serving disadvantaged clients who do not have the resources to access traditional law firms:

True disruption is likely to come from those serving the “lower end” of the market: the solo practitioners, legal services lawyers, and “low bono” providers of legal services. It is innovation in these corners of the market where pathbreaking disruption will take place, mostly out of necessity. What is more, it is the low-end of the market that is actually quite robust – that is, there is a desperate need for legal services, just an inability to pay for them.

¹² Subhajit Basu and Joe Duffy, ‘Providing Legal Information and Advice to Older People: As Much a Question of Accessibility as Affordability’ (2010) 1(3) *European Journal of Law and Technology* 1, 1 <<http://ejlt.org/article/view/2/82>>.

¹³ Coumarelos et al, above n 4. McDonald and Wei, above n 9, note that people with multiple disadvantages typically have reduced capability to deal with legal problems.

¹⁴ Kaspiew, Carson and Rhoades, above n 7, 13.

¹⁵ For example, see Michael Cain, Deborah Macourt and Geoff Mulherin, *Lawyer Availability and Population Change in Regional, Rural and Remote Areas of New South Wales* (2014) Law and Justice Foundation of New South Wales; Simon Rice, ‘Access to a Lawyer in Regional Australia: Thoughts on Evidence We Need’ (2011) 16(1) *Deakin Law Review* 13.

¹⁶ Susannah Sage-Jacobson, ‘Access to Justice for Older People in Australia’ (2015) 33(2) *Law in Context* 142, 159.

If disruption is indeed coming to the legal services market, and few can doubt that it is, technological innovation, one of the main drivers of this disruption, can serve to widen access to justice in communities desperate for legal assistance – low- to moderate-income communities, the working poor, and the middle class.¹⁷

To this list, we add older adults who may face multiple barriers in accessing professional legal assistance.

Looking to Telehealth

In our view, the legal profession can learn much from the field of telehealth in its efforts to use new technologies to meet the needs of underserved populations. Telehealth refers to the use of ICTs

to deliver health services and transmit health information over both long and short distances. It is about transmitting voice, data, images and information rather than moving care recipients, health professionals or educators. It encompasses diagnosis, treatment, preventive (educational) and curative aspects of healthcare services and typically involves care recipient(s), care providers or educators in the provision of these services directed to the care recipient.¹⁸

A recent systematic literature review concludes that “[t]he best application for telemedicine seems to be for frail, elderly or remote patients”¹⁹ as they face the greatest barriers in attending in-person professional consultations. Telehealth initiatives are underway around the world and a substantial body of research reports findings from the implementation and evaluation of these projects. The value of looking to literature on telehealth is underscored by the paucity of evidence evaluating programs that deliver technology-enabled legal assistance. In 2011, the Law and Justice Foundation of New South Wales reported on an extensive search for literature on videoconferencing to provide legal outreach and found “virtually no research reports which have *specifically* evaluated the effectiveness of video conferencing for the provision of legal assistance.”²⁰ Legal aid organisations and community legal centres are undertaking video or webconferencing legal assistance pilot projects in various parts of Australia, however, evaluation results are limited or not yet produced.²¹

¹⁷ Raymond H Brescia et al, ‘Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice’ (2015) 78 *Albany Law Review* 553, 554.

¹⁸ See Australian Government Department of Health, *Telehealth* (2015) <<http://www.health.gov.au/internet/main/publishing.nsf/Content/e-health-telehealth>>. The terms ‘telehealth’ and ‘telemedicine’ are sometimes used interchangeably, but we use ‘telehealth’ to encompass a broader range of health services than those provided by a medical practitioner, such as telenursing and telepsychology.

¹⁹ Linda Zandbelt, Froukje de Kanter and Dirk Ubbink, ‘E-Consulting in a Medical Specialist Setting: Medicine of the Future?’ (2016) 99(5) *Patient Education and Counselling* 689, 702.

²⁰ Suzie Forell, Meg Laufer and Erol Digiusto, *Justice Issues Paper 15: Legal Assistance by Video Conferencing: What is Known?* (2011) Law and Justice Foundation of New South Wales, 9 <[http://www.lawfoundation.net.au/ljf/site/article/IDs/B0A936D88AF64726CA25796600008A3A/\\$file/JI15_Videoconferencing_web.pdf](http://www.lawfoundation.net.au/ljf/site/article/IDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf)>.

²¹ The Law and Justice Foundation funded a pilot project to trial videoconferenced legal outreach for people living in remote areas of the mid north coast of New South Wales, focused particularly on Indigenous residents: Law and Justice Foundation of New South Wales, *Awarded Grants in 2014/2015* (2016) <<http://www.lawfoundation.net.au/ljf/app/6D2201A34AAB9804CA257EA7000E4D0B.html>>. See also New South Wales Government, *Review of the Delivery of Legal Assistance Services to the NSW Community* (June 2012) Attorney General and Justice, 41 <http://www.justice.nsw.gov.au/justicepolicy/Documents/delivery_of_legal_assistance_services_report_final.pdf>: “Legal Aid NSW, the

In 2012, the federal government funded several telelaw projects as part of its National Broadband Network Regional Legal Assistance Program and a summary of experiences is available as a conference paper.²²

Literature Review Method

We searched for English-language literature in health, legal and multidisciplinary databases.²³ Our search terms were constructed to identify articles dealing with technology-enabled health and legal service delivery targeted at people aged 60 years and older.²⁴ We included studies involving video conferencing, web conferencing, Skype or other Internet-based applications that support interactive, synchronous audio-visual consultations and allow participants to read documents together and to see and react to non-verbal communication cues. Our legal literature searches returned a small number of articles discussing older adults' attitudes and behaviours in relation to using the Internet to search for legal information.²⁵ While not directly relevant to our research question, these articles provided useful contextual information. In health literature, we excluded studies on 'smart technology' used to monitor older adults, such as wearable devices or in-home surveillance systems, as these technologies raise privacy issues that are not relevant to our research question. Articles on mobile messaging, reminder or alert services, as well as services delivered solely by telephone were also excluded as they do not involve interaction through a visual interface.

We focused on research reporting clients' perspectives on the acceptability of and satisfaction with telehealth. This information is pertinent for legal service providers in identifying factors that hinder or support clients' willingness to use new technologies. In contrast, studies reporting health outcomes associated with telehealth use are less likely to have findings that can be generalised to the

Aboriginal Legal Service [ALS] and the Far West Community Legal Centre are planning a series of virtual legal advice clinics in remote NSW. Using desktop video-conferencing, the service model will combine a locally-based support person (e.g. an ALS field officer) sitting with the client and a regionally based Legal Aid NSW lawyer providing advice over the Internet.”

²² Leanne Ho, 'Pro Bono Legal Services via Video Conferencing: Opportunities and Challenges' (Paper presented at the 3rd National Rural Law and Justice Conference, Orange, 3-4 July 2015) <<http://www.nationalprobono.org.au/ssl//CMS/files/cms/ProBonoLegalServicesViaVideoConferencing-OpportunitiesAndChallenges040615.pdf>>.

²³ The following databases and websites were accessed during the literature search: Medline; EMBASE; CINAHL; PsychINFO; Cochrane Library; AGIS Plus Text; Westlaw AU; LexisNexis AU; HeinOnline; ProQuest; Legal Aid New South Wales (<<http://www.legalaid.nsw.gov.au/publications>>); Legal Services Board (UK) (<<http://research.legal-servicesboard.org.uk/>>); and Scottish Government (<<http://www.gov.scot/>>).

²⁴ Combinations of key search terms were used across each database. In health databases, combinations included: 'telehealth/medicine' and hyphenated variations, 'older adult/person/people', 'geriatric', 'senior', 'internet', 'computer', 'web', 'video', 'Skype', 'systematic review'. In legal databases, the same search terms for older adults and forms of technology (e.g., 'internet', 'computer', etc.) were combined with variations of 'legal service', 'legal information', 'legal advice', 'legal need'. Finally, when searching for relevant grey literature, the terms were simplified to search for materials on older people and delivery of legal assistance via technology.

²⁵ Catrina Denvir, Nigel Balmer and Pascoe Pleasence, 'Portal or Pot Hole? Exploring How Older People Use the "Information Superhighway" for Advice Relating to Problems with a Legal Dimension' (2014) 34(4) *Ageing and Society* 670; Joe Duffy, Subhajit Basu and Katherine C Pearson, 'Older People and Legal Advice – The Need for Joined Up and Creative Approaches' (2012) 34(1) *Journal of Social Welfare and Family Law* 31; Basu and Duffy, above n 12.

legal context.²⁶ In light of the volume of literature on telehealth, we focused on recent systematic reviews that summarise findings from a number of previously published studies.

Telehealth experiences are instructive to the legal sector, however we acknowledge differences between health and legal services. There are coordinated efforts underway to build telehealth capacity in health systems,²⁷ but with the exception of government investments in videoconferencing for some court or tribunal proceedings,²⁸ technology-enabled legal assistance is not being driven as a public policy initiative. This is likely due, in part, to public health systems seeking potential cost savings through telehealth. At the individual level, people may be more likely to take up telehealth services when they are dealing with the pain and distress of illness or injury; they may be less motivated to take up telelaw in the absence of supportive referral pathways (a topic we consider later).

II TECHNOLOGY-ENABLED SERVICE DELIVERY TO MEET THE NEEDS OF OLDER ADULTS

Computer and Internet Use by Older People

As a starting point, in order for technology-enabled service delivery to meet the needs of older adults, they need access to computer or mobile devices, and the capacity to use software and applications for video or webconferencing. In general, there has been less take-up of web based technology by older persons compared to younger age groups and some may assume that older adults are unlikely to access health, legal or other professional services delivered using online means.²⁹ Yet research in Australia and other high-income countries shows that older people are increasingly using the Internet and new technologies. According to Basu and Duffy, “[a]vailable evidence from different research studies report that the online activities of older people are no different from other age groups. They use the internet for communication and information searches as well as using online services.”³⁰ A 2015 Commonwealth report on the digital lives of Australians points out that persons aged 55 years and over demonstrated the largest percentage increase across all age demographics in downloading app digital resources.³¹ Further, a large majority of the age group 65

²⁶ Examples of health outcome data include patient mortality and hospital readmission rates, as well as patient compliance with therapeutic regimes.

²⁷ For examples, see telehealth pilot programs funded through the Commonwealth Department of Health: Department of Health, *Telehealth Pilots Programme* (2014) <<http://health.gov.au/ehealth-nbntelehealth>>.

²⁸ See Supreme Court of New South Wales, *Video and Telephone Conferencing* (2016) <http://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_facilitiesupport/sco2_courtroomtechnology/sco2_videoconferencingteleconferencing.aspx>. For commentary, see Anne Wallace, ‘Virtual Justice in the Bush: The Use of Court Technology in Remote and Regional Australia’ (2008) 19(1) *Journal of Law, Information and Science* 1.

²⁹ Helen Feist and Kelly McDougall, ‘Older People’s Use of New Communication Technologies: Research Findings & Policy Implications’ (2013) 1(8) *Australian Population and Migration Research Centre Policy Brief* 1 <https://www.adelaide.edu.au/apmrc/pubs/policy-briefs/APMRC_Policy_Brief_Vol_1_8_2013.pdf>.

³⁰ Basu and Duffy, above n 12, 3.

³¹ Australian Communications and Media Authority, *Communications Report 2013-14 Series: Report 1 – Australians’ Digital Lives* (March 2015), 18 <<http://www.acma.gov.au/~/media/Research%20and%20Analysis/Research/pdf/Australians%20digital%20livesFinal%20pdf.pdf>>.

years and older had accessed the Internet in the six months prior to the research being undertaken.³² Stereotypical views that older persons are unwilling to engage with video and web interfaces are unfounded as there is “no evidence to suggest that older people are particularly averse to using new technologies, if these are appropriately designed and introduced.”³³

To this end, it is argued that older adults “need to be recognised in an ever-growing culture of digital innovation with evidence that many are as keen to engage with the Internet as their younger counterparts.”³⁴ A recent Swedish study deliberately involved elderly ‘digitally illiterate’ people who had never used the Internet or computers and stated they had no interest in doing so.³⁵ The study participants quickly learned to report medical symptoms using digital pen technology and the authors concluded that easy-to-use technologies tailored to meet client needs can encourage even the most neophyte or disinterested users to engage with technology.³⁶

The ‘digital divide’ refers to inequality in access to the Internet and this divide must be overcome if technology-enabled services are to reach groups with unmet health or legal needs, including older adults and RRR residents. Commentators have argued for policy measures “to accelerate the appropriate use of digital technology” including “improving education and technological literacy and providing access to low-cost technology.”³⁷ The rollout of the National Broadband Network across Australia is a key strategy to support technology-enabled service delivery in RRR communities.³⁸ Various community organisations offer training for older adults to learn how to use computers and the Internet. As one example, Telstra partners with the New South Wales, Queensland and Victorian governments to deliver the Tech Savvy Seniors program, which provides training on use of computers, tablets and smartphones in local libraries and community colleges.³⁹

A recent report on the use of new technologies by older persons concludes that

(u)tilising the advantages that new technologies offer in communication, service delivery and social connectedness means the ageing society can become part of the information society. As researchers, policy makers and service providers it is important that we do not embrace ageist beliefs about older people being unable to learn and unwilling to adopt new technologies.⁴⁰

Telehealth Acceptability and Satisfaction

³² Ibid 12.

³³ Basu and Duffy, above n 12, 3. See also Kate E Laver et al, *Telerehabilitation Services for Stroke* (16 December 2013) Cochrane Stroke Group, 13 <<http://onlinelibrary.wiley.com.ezproxy.newcastle.edu.au/doi/10.1002/14651858.CD010255.pub2/epdf>>.

³⁴ Duffy, Basu and Pearson, above n 25, 32.

³⁵ Leili Lind and Daniel Karlsson, ‘Telehealth for the “digital illiterate” – Elderly Heart Failure Patients’ Experiences’ (2014) 205 *Studies in Health Technology & Informatics* 353.

³⁶ Ibid 356.

³⁷ Edward Alan Miller and Darrell M West, ‘Where’s the Revolution? Digital Technology and Health Care in the Internet Age’ (2009) 34(2) *Journal of Health Politics, Policy & Law* 261, 275.

³⁸ Department of Communications and the Arts, *National Broadband Network* (2016) <<https://www.communications.gov.au/what-we-do/internet/national-broadband-network>>.

³⁹ Telstra, *Seniors – Get Tech Savvy* <<https://www.telstra.com.au/aboutus/community-environment/community-programs/seniors>>.

⁴⁰ Feist and McDougall, above n 29, 6.

Client acceptance is essential to the success of technology-enabled service delivery;⁴¹ as Stewart and colleagues observe, a key consideration must be “older people’s perceptions of telecare and whether it can meet their needs.”⁴² Recent literature reviews identify general categories of barriers and facilitators that affect clients’ willingness to use and satisfaction with telehealth services.⁴³ Barriers include: technology-related issues that prevent or make it difficult to use the service; technical problems, such as problems connecting to or using online systems; technology anxiety; lack of access to appropriate technical support; barriers related to the process of using the technology-enabled service; and a preference for in-person interactions.⁴⁴ Organisations designing and delivering new technology-enabled services should put measures in place to spot and fix problems, especially technical glitches, to ensure clients are not put off using the service. Facilitators for clients include: improved access to services; improved knowledge and ability to deal with problems; confidence in the service provided; perceiving technology-enabled service as equal to or better than in-person consultations; convenience; and ease of use.⁴⁵ We briefly comment later on communication strategies recommended for professionals to enhance clients’ experiences during video or webconferencing.

Many telehealth studies involving older adults report a high degree of user satisfaction with technology-enabled services and, in many instances, no difference in satisfaction between web-enabled and in-person interaction with a professional.⁴⁶ In comparisons of video and telephone-based telehealth, many clients prefer video for the benefit of the visual interaction with the professional. Telehealth interventions have been found to be effective in reaching socially isolated older adults who are described as “home-bound” and limited in accessing in-person care due to disability, lack of transport options, and limited networks or poor support from family and friends.⁴⁷ Telehealth services are also well accepted for conditions or situations often perceived as stigmatised or highly sensitive, such as end-of-life consultations and mental health care.⁴⁸ A benefit of telehealth is the

⁴¹ THF Broens et al, ‘Determinants of Successful Telemedicine Implementations: A Literature Study’ (2007) 13 *Journal of Telemedicine and Telecare* 303.

⁴² Lisa Stewart and Brian McKinstry, ‘Fear of Falling and the Use of Telecare by Older People’ (2012) 75(7) *British Journal of Occupational Therapy* 304, 306.

⁴³ Sarah L Gorst et al, ‘Home Telehealth Uptake and Continued Use Among Heart Failure and Chronic Obstructive Pulmonary Disease Patients: a Systematic Review’ (2014) 48(3) *Annals of Behavioural Medicine* 323. See also Kavita Radhakrishnan et al, ‘Barriers and Facilitators for Sustainability of Tele-Homecare Programs: A Systematic Review’ (2015) 51(1) *Health Services Research* 48.

⁴⁴ Gorst et al, above n 43, 331.

⁴⁵ Ibid 332.

⁴⁶ For example, see Laver et al, above n 33; Patricia A Schweickert et al, ‘Telehealth Stroke Education for Rural Elderly Virginians’ (2011) 17(10) *Telemedicine Journal & E-Health* 784; LE Davis et al, ‘Teleneurology: Successful Delivery of Chronic Neurologic Care to 354 Patients Living Remotely in a Rural State’ (2014) 20(5) *Telemedicine Journal & E-Health* 473; Lauren Desko and Mitchell Nazario, ‘Evaluation of a Clinical Video Telehealth Pain Management Clinic’ (2014) 28(4) *Journal of Pain & Palliative Care Pharmacotherapy* 359.

⁴⁷ For example, see ZD Gellis et al, ‘Outcomes of a Telehealth Intervention for Homebound Older Adults with Heart or Chronic Respiratory Failure: A Randomized Controlled Trial’ (2012) 52(4) *Gerontologist* 541; NG Choi et al, ‘Telehealth Problem-Solving Therapy for Depressed Low-Income Homebound Older Adults’ (2014) 22(3) *The American Journal of Geriatric Psychiatry* 263; Antonia Arnaert and Lucas Delesie, ‘Effectiveness of Video-Telephone Nursing Care for the Homebound Elderly’ (2007) 39(1) *Canadian Journal of Nursing Research* 20.

⁴⁸ Kirsten Ostherr et al, ‘Death in the Digital Age: A Systematic Review of Information and Communication Technologies in End-of-Life Care’ (2016) 19(4) *Journal of Palliative Medicine* 408; DM Hilty et al, ‘The Effectiveness of Telemental Health: A 2013 Review’ (2013) 19(6) *Telemedicine Journal and E-Health* 444; RL Bashshur et al, ‘The

ability of health professionals to interact with older patients in the comfort of their own home, or a familiar setting in their local community, such as a doctor's office. As Arnaert and Delesie highlight, "[t]he telecare delivery model makes it feasible, through the deployment of telecommunications networks, to target packages of care in response to assessed needs... Identifying groups of elderly at particular risk for certain outcomes is an important step in addressing their needs, expectations, and preferences."⁴⁹ We did not focus our analysis on health outcomes data, but note that a recent systematic review that analysed 93 randomised controlled trials involving over 22,000 patients, concluded that interactive telehealth is at least as effective as in-person care in producing desired health outcomes for patients.⁵⁰ While a majority of telehealth clients report satisfaction, some portion of people may perceive videoconferenced appointments to fall short of the 'best care' possible, but are nonetheless willing to trade off in-person 'best care' with the convenience and cost-savings of avoiding traveling long distances for appointments with professionals.⁵¹

Interestingly, some health literature says that clients report greater satisfaction with telehealth than health practitioners, in part because the latter felt uncertain whether the service they provided was as effective as what they could offer in person and they felt the remote delivery impeded communication.⁵² Moreover, some practitioners report that delivering care through videoconferencing demanded more mental effort and technical skill than a standard in-person consultation.⁵³ Professionals are urged not to "be intimidated by the technology or its encompassing logistics"⁵⁴ and to overcome their own biases that favour traditional models of service delivery. It has been said that telehealth services may demand a "renegotiation of the patient-clinician relationship"⁵⁵ and similarly, telelaw may change traditional dynamics between a lawyer and a client. It should not be assumed that a shift in dynamics is necessarily detrimental. Early literature on telehealth raised concern that technology would depersonalise the therapeutic relationship and cause a breakdown between clients and health practitioners, yet this fear has not materialised in subsequent studies.⁵⁶

Empirical Evidence for Telemedicine Interventions in Mental Disorders' (2015) *Telemedicine Journal and E Health* [Epub ahead of print] <<http://www.ncbi.nlm.nih.gov/pubmed/26624248>>.

⁴⁹ Arnaert and Delesie, above n 47, 22.

⁵⁰ Gerd Flodgren et al, *Interactive Telemedicine: Effects on Professional Practice and Health Care Outcomes* (7 September 2015) Cochrane Database of Systematic Reviews <<http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD002098.pub2/full>>.

⁵¹ Annette M Johansson, Inger Lindberg and Siv Söderberg, 'Patients' Experiences with Specialist Care via Video Consultation in Primary Healthcare in Rural Areas' (2014) *International Journal of Telemedicine and Applications* <<http://www.hindawi.com/journals/ijta/2014/143824/>>.

⁵² Xiao Liu et al, 'Doctor-Patient Communication: A Comparison Between Telemedicine Consultation and Face-To-Face Consultation' (2007) 46(5) *Internal Medicine* 227; Zandbelt, de Kanter and Ubbink, above n 19; Laurence Esterle and Alexandre Mathieu-Fritz, 'Teleconsultation in Geriatrics: Impact on Professional Practice' (2013) 82(8) *International Journal of Medical Informatics* 684.

⁵³ MA Krousel-Wood et al, 'Patient and Physician Satisfaction in a Clinical Study of Telemedicine in a Hypertensive Patient Population' (2001) 7 *Journal of Telemedicine and Telecare* 206.

⁵⁴ Jay H Shore, 'Telepsychiatry: Videoconferencing in the Delivery of Psychiatric Care' (2013) 170(3) *American Journal of Psychiatry* 256, 256.

⁵⁵ Radhakrishnan et al, above n 43, 69.

⁵⁶ NM Hjelm, 'Benefits and Drawbacks of Telemedicine' (2005) 11 *Journal of Telemedicine and Telecare* 60.

The attitudes and experiences of legal professionals will, however, be crucial to the success of technology-enabled service delivery.⁵⁷ Lawyers will need to feel confident that telelaw is effective and allows them to deliver high-quality services in accordance with professional standards. It is vital that practitioners are trained in the use of the technology platform and in effective communication techniques when interviewing and advising a client via video or webconference.⁵⁸ Shore points out that “[v]ideoconferencing has a direct impact on communication styles and interactions. [Professionals] need to be aware of this and appropriately adapt their clinical style and process.”⁵⁹ For example, they need to be aware of how they appear on the client’s screen and the tone this sets for a consultation.⁶⁰ Shore states that clients and professionals may experience a sense of distance or remoteness, but suggests “[t]his perception often diminishes or disappears after a working alliance is established.”⁶¹ Indeed, studies comparing in-person consultations with videoconferencing have found that clients report equal satisfaction with the professional’s interpersonal skills and ability to establish rapport with the client.⁶² The separation between client and professional can be advantageous “to facilitate feelings of confidentiality” since the two people are “less likely to encounter each other in a community setting.”⁶³

When interacting with clients using technology, legal professionals must consider “age related functional limitations such as vision decline, motor skill diminishment and cognition effects”⁶⁴ that may impair their ability to use a computer. They should be prepared to advise a client on how to make adjustments, such as increasing volume if necessary for clients with hearing impairment, and how to adjust video displays. For clients accessing services through community settings, a local support person can assist and some telehealth initiatives have incorporated peer technical assistants to help older clients gain familiarity with computer technology.⁶⁵ Client confidentiality must be protected and technical helpers should only be present as needed to troubleshoot any problems.

Facilitating Access to Telelaw

A primary aim of using technology to deliver professional services is to improve accessibility for clients. In designing and delivering telelaw services, how and where clients will access services are crucial considerations. A major difference between health and legal contexts is that older adults, on

⁵⁷ Victoria Wade et al, ‘A Qualitative Study of Sustainability and Vulnerability in Australian Telehealth Services’ (2010) 161 *Studies in Health Technology and Informatics* 190.

⁵⁸ Radhakrishnan et al, above n 43.

⁵⁹ Shore, above n 54, 260.

⁶⁰ Close-up facial framing can appear too intrusive and it is recommended that a professional’s head and shoulders appear in the framing – see Shore, above n 54.

⁶¹ Shore, above n 54, 261.

⁶² For example, see Zia Agha et al, ‘Patient Satisfaction with Physician–Patient Communication During Telemedicine’ (2009) 15(9) *Telemedicine and e-Health* 830.

⁶³ Shore, above n 54, 261.

⁶⁴ Basu and Duffy, above n 12, 9. See also NM Peel, TG Russell and LC Gray, ‘Feasibility of Using an In-Home Video Conferencing System in Geriatric Rehabilitation’ (2011) 43(4) *Journal of Rehabilitation Medicine* 364, 365; Denvir, Balmer and Pleasence, above n 25, 673.

⁶⁵ For example, see Peter Shore et al, ‘Meeting Veterans Where They’re @: A VA Home-Based Telemental Health (HBTMH) Pilot Program’ (2014) 48(1) *International Journal of Psychiatry in Medicine* 5.

average, see a general medical practitioner ten times annually,⁶⁶ while many may have limited interactions with legal practitioners. Chronic health conditions and acute medical events mean people seek out healthcare, and once in contact with the healthcare system, patients can be supported to access available telehealth services. This systemic coordination generally does not exist to help refer older adults to legal services that could assist them and, for telelaw to be successful, lawyers will need to partner with local community organisations that can facilitate this access. As older adults typically interact with healthcare providers, it is sensible for legal service organisations to establish connections with health services. A growing body of evidence identifies healthcare providers as trusted intermediaries to facilitate “access to justice pathways, particularly for more disadvantaged and less capable people at heightened risk of unmet legal need.”⁶⁷ Health organisations can promote general community awareness of a telelaw outreach service and professionals, such as doctors, community nurses and welfare workers could identify individuals who have more serious unmet legal needs and assist in the warm referral of clients to the telelaw service.⁶⁸ Physical access to computers for webconferenced consultations could occur in a client’s own home or, for persons without suitable home computing technology, local health care and community organisations like neighbourhood centres could be enlisted to provide a private space with computer access where the client can consult with a legal professional.⁶⁹ As noted earlier, staff at these venues could assist older clients in accessing and using the technology.

Evaluation Considerations

Telelaw projects should be carefully evaluated to build an evidence base for the ongoing development of technology-enabled legal services: “When [new program] implementations are undertaken, often at great expense and effort, yet are not properly evaluated, many of the learnings can be lost.”⁷⁰ We offer brief comments based on current issues and recommendations in telehealth evaluation. In general, telehealth projects have been evaluated for outcomes in one or more of the following five categories:

⁶⁶ Australian Bureau of Statistics, *Patient Experiences in Australia: Summary of Findings, 2012-13, General Practitioners* (21 November 2011) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4839.0main+features32012-13>>.

⁶⁷ McDonald and Wei, above n 9, 10; Lauren Adamson, ‘The Power of Collaboration’ (2014) 8 *Elder Law Review* 1 <https://www.uws.edu.au/__data/assets/pdf_file/0010/733789/Adamson_07.pdf>.

⁶⁸ Lawyers involved in telelaw outreach can educate local healthcare providers on the use of screening tools that identify clients with unmet legal needs. For example, legal health checklists have been developed for the National Association of Community Legal Centres: *Legal Health Check* <<http://legalhealthcheck.org.au/legalhealthcheck/>>.

⁶⁹ In the United States, Lynch has proposed the idea of Town Legal Centres in rural communities. These virtual legal centres would operate out of community settings like libraries and provide space where not-for-profit legal service organisations and private lawyers could offer legal assistance via video or webconferencing: Brian Lynch, ‘Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centres’ (2015) 90(4) *Indiana Law Journal* 1683. See also Lisa Pruitt and Bradley Showman, ‘Law Stretched Thin: Access to Justice in Rural America’ (2014) 59(3) *South Dakota Law Review* 466. For Australian literature on access to justice in RRR communities, see collections of papers in (2011) 16(1) *Deakin Law Review* <<https://ojs.deakin.edu.au/index.php/dlr/issue/view/17>>, and (2001) 26(2) *Alternative Law Journal* <<https://www.altlj.org/publications/back-issues/2001-vol-26/category/84-vol-26-2-2001-legal-services-in-rural-communities>>. See also Jeff Giddings and Barbara Hook, ‘The Tyranny of Distance: Clinical Legal Education in the Bush’ (2002) 2 *International Journal of Clinical Legal Education* 64.

⁷⁰ Nathan Poultney, Anthony Maeder and Jim Basilakis, ‘Evaluation Study of Australian Telehealth Projects’ (Paper presented at Proceedings of the 8th Australasian Workshop on Health Informatics and Knowledge Management, Sydney, 27-30 January 2015) 63, 63 <<http://crpit.com/confpapers/CRPITV164Poultney.pdf>>.

Patient-related outcomes associated with their experience with the consultation (e.g. patient satisfaction with convenience of care, specialist services, or communication), patients' self-management, or patients' health (e.g. quality of life or well-being). *Healthcare professional-related outcomes* associated with their experience with the consultation, e.g. their satisfaction with communication, examination, or overall care. *Cost outcomes*, e.g. costs of travelling to the site of consultation, loss of work time, or technologies used. *Time outcomes*, e.g. duration of the consultation, patients' or healthcare professionals' travelling time or waiting time. *Follow-up outcomes*, e.g. return visits or further appointments requested.⁷¹

For client satisfaction, telehealth evaluations have typically used surveys and recent research has focused on the development of a short, ten-question Telehealth Satisfaction Scale that measures client satisfaction with the quality of the client-professional interaction (e.g., thorough and courteous consultation) and the technical aspects of the technology platform (e.g., voice and video quality and personal comfort using the system).⁷² This type of survey instrument could readily be adapted for telelaw program evaluation.

Some people refuse telehealth services or abandon them after an initial period of use. Many health studies do not report reasons for refusal or abandonment, but those that do cite factors such as technical problems (e.g., lack of reliable Internet access), the user feeling 'overwhelmed' by the technology, and a lack of interest or motivation in accessing services via technology. Some telehealth services require ongoing participation, such as regular attendance in videoconferenced patient education or therapy programs. Client drop-out may be expected in these situations, but legal consultations that are one-off appointments may be less affected by user fatigue. Health researchers recommend more study to understand the factors that lead to refusal or abandonment and similar work will need to be done in a telelaw context. Technology-enabled services cannot replace all in-person contact, particularly where complex problems are involved, and evaluations should identify the types of matters considered more and less suitable to deal with using telelaw. Understanding differences of views between clients and lawyers on this point and reasons why would also be informative.

There are not yet generalisable conclusions on the cost effectiveness of telehealth interventions due to limited data reporting⁷³ and the lack of use of standardised economic evaluation guidelines.⁷⁴ Some research quantifies savings for clients in terms of saved travel expenses.⁷⁵ Service providers also save transportation and accommodation costs if in-person mobile outreach clinics are replaced

⁷¹ Zandbelt above n 19, 690-691.

⁷² Debra G Morgan, 'The Telehealth Satisfaction Scale: Reliability, Validity, and Satisfaction with Telehealth in a Rural Memory Clinic Population' (2014) 20(11) *Telemedicine Journal and e-Health* 997.

⁷³ Flodgren et al, n 50.

⁷⁴ Mistry Hema, Garnvwa Hyeladzira and Oppong Raymond, 'Critical Appraisal of Published Systematic Reviews Assessing the Cost-Effectiveness of Telemedicine Studies' (2014) 20(7) *Telemedicine and e-Health* 609.

⁷⁵ Zandbelt, de Kanter and Ubbink, above n 19. For example, a Canadian study reported that advanced cancer patients receiving palliative care consultations reported a high degree of satisfaction and saved, on average, over 470 km in travel by having videoconsultations with a city-based specialist: SM Watanabe et al, 'Improving Access to Specialist Multidisciplinary Palliative Care Consultation for Rural Cancer Patients by Videoconferencing: Report of a Pilot Project' (2013) 21(4) *Supportive Care in Cancer* 1201.

with technology-enabled programs. Longer-term benefits for clients (and health or legal systems) may be more complicated if it requires quantifying the value of future problems averted – such as hospitalisation or litigation – by accessing professional help now.⁷⁶

Recent systematic reviews in telehealth call for more robust and consistent evaluation strategies and better reporting of outcomes, with attention to the key barriers and enablers summarised earlier.⁷⁷ Several telehealth evaluation frameworks have been published⁷⁸ and Australian researchers have recently proposed a uniform model for the evaluation of telehealth projects in the domestic context.⁷⁹ Legal service organisations planning to evaluate telelaw initiatives would benefit from the advice of telehealth program evaluation experts to adapt such frameworks to the legal context.

3 CONCLUSIONS

In regard to telehealth, it is argued that “[d]elivering health care at a distance is a practical and moral imperative in a world where underserved populations are the rule rather than the exception. Telemedicine epitomises the potential of technology to reshape health care delivery, changing the way it is organised, improving access, and reducing the cost.”⁸⁰ A similar moral imperative can drive telelaw innovation.

Overall, the literature we analysed indicates a willingness by older adults to engage with technology-enabled services that are designed to meet their needs. In considering the potential of telelaw, barriers for older adults stem not from a general reluctance to use technology, but likely more from a lack of awareness of what is a legal problem and a willingness to deal with those problems once identified. Legal education campaigns and new approaches, such as referrals to telelaw services by healthcare providers, can help older people realise they have a legal problem that could be remedied with appropriate professional assistance. Various factors are likely to increase the acceptability and uptake of telelaw services, including convenient access, measures to protect privacy and confidentiality, and reliable and user friendly technology.

Ultimately, we agree with Basu and Duffy’s conclusion that access to the Internet and computer technology “has tremendous potential to broaden the lives and increase the independence and inclusion of older people,”⁸¹ including by facilitating access to legal help for those who would otherwise face significant barriers. Legal service providers now need to take up the opportunity to

⁷⁶ David A Asch, ‘The Hidden Economics of Telemedicine’ (2015) 163 *Annals of Internal Medicine* 801.

⁷⁷ Flodgren et al, above n 50; Poultney et al, above n 70.

⁷⁸ Marilynne Hebert, ‘Telehealth Success: Evaluation Framework Development’ (2001) 84(2) *Studies in Health Technology and Informatics* 1145; Michelle Brear, ‘Evaluating Telemedicine: Lessons and Challenges’ (2006) 35(2) *The HIM Journal* 23.

⁷⁹ Ambica Dattakumar et al, *A Unified Approach for the Evaluation of Telehealth Implementation in Australia* (2 September 2013) Australian Policy Online <<http://apo.org.au/resource/unified-approach-evaluation-telehealth-implementations-australia>>; Poultney et al, above n 84.

⁸⁰ Gabriel Rada, *Telemedicine: Are We Advancing the Science?* (8 September 2015) Cochrane Database of Systematic Reviews <<http://www.cochranelibrary.com/editorial/10.1002/14651858.ED000105>>.

⁸¹ Basu and Duffy, above n 12, 8.

deliver and evaluate telelaw initiatives and we hope the findings presented here will aid in that endeavour.