



Action Committee on Court Operations in Response to COVID-19

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

Restoring Court Operations in Northern, Remote and Indigenous Communities

On 31 July 2020, the Action Committee heard presentations from four resource persons with first-hand experience in court operations in northern, remote and Indigenous communities: Chief Justice Louise A Charbonneau of the Supreme Court of the Northwest Territories; Judge Mary McAuley of the Provincial Court of Saskatchewan; Douglas White, Chair of the BC First Nations Justice Council; and Dr. Allen Benson, Chief Executive Officer of Native Counselling Services of Alberta. These individuals were asked to discuss the distinct ways in which the COVID-19 pandemic has affected the delivery of court services in the communities with which they are most familiar, and to share ideas about what the Action Committee could do to support the safe restoration of court services in those communities.

The presentations underscored the fact that community experiences vary widely depending on their particular location, demography, and resources, and that the justice sector challenges facing each community are unique. Certain important themes nonetheless emerged. The Action Committee undertook to consider these themes in order to help shed light on the needs of northern, remote and Indigenous communities as they contemplate the resumption of court operations.

The resolution of justice sector issues affecting northern, remote and Indigenous communities necessarily demands coordinated efforts from multiple levels of government – including a central role for Indigenous Peoples. Many of the solutions needed to restore court operations will be locally-driven, informed by communication and collaboration among local judges, chief justices, community leaders, courts administrators, health professionals, legal counsel, social service providers and others. In keeping with its mandate, the Action Committee nonetheless wishes to highlight **common challenges and concerns** that emerged from the presentations it heard, and to identify **principles and recommendations for change** that could hold promise in overcoming those challenges, taking account of the various public health guidelines, protocols and regulations that may be in place. It is worth noting that while these principles and recommendations were first assembled with a view to addressing the situation of court services in northern, remote and Indigenous communities, their relevance goes beyond the current context and could be used to guide decision-making on the promotion of access to justice in general.

1. Common Challenges and Concerns

While the resource persons who addressed the Action Committee represented diverse regions and communities, the following emerged as critical common challenges and concerns:

- Even before the pandemic, parties to proceedings in **Indigenous and remote communities** — accused persons, offenders, victims and witnesses — often struggled to find services and providers needed for intervention, court accompaniment and healing purposes. Obstacles to accessing justice that have been introduced by the pandemic,

including backlog and the interruption of court proceedings, have **affected these communities disproportionately** and exacerbated the challenges they were already facing. Key obstacles include a lack of local resources and capacity to implement the health and safety measures needed to restore court proceedings. Moreover, methods of justice delivery that are responsive to the priorities and needs of Indigenous communities – including restorative justice – may be difficult to adapt to alternative mediums, such as remote processes. Indigenous communities that were already disproportionately excluded from meaningful access to justice have felt this exclusion deepen.

- **Unequal distribution of technological resources** (including access to reliable internet, cellular and phone service) exacerbates unequal access to justice (including court services, hearings, and opportunities to speak with counsel and other intermediaries), particularly as the COVID-19 pandemic leads to greater reliance on technological alternatives to in-person proceedings. Disparities stemming from unequal access to technology are exacerbated by other socio-demographic circumstances that occur disproportionately in northern, remote and Indigenous communities, including poverty, lack of stable housing, and barriers to literacy. While technology can be a powerful tool in enabling access to justice, and is already proving to be so, these disparities must be accounted for.
- Many people in rural and remote settings experience a **high level of anxiety about the intrusion of court operations in their communities**, fearing that non-resident judges, court staff, counsel, and parties could introduce and spread COVID-19. These anxieties are informed partly by the devastating effects of past pandemics on Indigenous communities, and by the fact that many northern and remote communities do not have ready access to health services, safety equipment, and other resources that would be essential in responding to a COVID-19 outbreak. Respect and care for Elders is a deeply held value in many Indigenous communities, and the pronounced risks of COVID-19 to the elderly causes heightened concern about possible exposure.
- Concerns related to health risks, delay, or uncertainty associated with participating in a trial process risk impacting the motivations and integrity of **pleas entered** by criminally accused persons.
- **Reliance on other authorities outside the court to facilitate remote access** for accused and detained persons to court proceedings and counsel is problematic, due in part to colonial and other experiences that have fostered distrust between these authorities and Indigenous people.

2. Principles and Recommendations for Change

To better coordinate and guide efforts to address these challenges and concerns, the Action Committee recognizes the importance of engaging in a meaningful dialogue and developing respectful relationships, both of which are critical to the success of any proposed solutions. In so doing, the Action Committee identified two key principles to help inform concrete adaptations in the delivery of court services to northern, remote and Indigenous communities. These principles share as a common underlying ethic that the pandemic should serve as a turning point leading to greater access to justice in the long-term, not just as a temporary response to the current crisis. In this vein, the Action Committee wishes to highlight that:

- **Justice is a service, not a place¹:** Adaptations in response to the pandemic should be geared to building better understanding of the justice system, access to counsel, and participation in court proceedings free from unreasonable obstacles. These responses should endeavor to preserve the wellbeing of justice system participants, including that of victims, unrepresented litigants and witnesses, that is to say their health and dignity and the due protection of their rights. They should do so in a way that both puts people at the heart of the justice system (a user-centered system) and recognizes the reality that people are increasingly turning to online services in several aspects of their lives. Ultimately, better access to services often means better outcomes for those involved.
- **Justice is a shared responsibility:** Judges, courts, and individuals rely on legal professionals to help facilitate and support system adaptations. For example, legal counsel should be encouraged to adapt their practices and methods of service delivery to complement justice system adaptations that have been needed to ensure safety and access to justice. This may require learning new technologies, helping to facilitate remote means of consulting with clients, and participating in court hearings virtually. It may also require helping to ensure client understanding of adapted court processes, and developing personal awareness of the unique challenges and concerns facing Indigenous and remote communities. In identifying ongoing system adaptations, governments and legal professionals (local judges, chief justices, courts administrators, Crown counsel, legal counsel, legal aid, etc.) should approach local communities as partners, and innovations to address the COVID-19 pandemic should reinforce longer-term planning toward increasing Indigenous Peoples' capacity in the administration of justice. Additionally, ensuring efficient cooperative federalism is essential to the delivery of quality justice services to northern, remote and Indigenous communities and, to that end, the need for the fruitful collaboration of all levels of government involved, including Indigenous governments, cannot be understated.

Challenges facing the courts in northern, remote and Indigenous communities also extend beyond operational concerns in the sense that the implementation of certain proposals for change could be complemented by legislative changes. For instance, there are legislative restrictions on the ability of accused persons to appear remotely by videoconference when the evidence of a witness is taken, which can impair the ability of the courts to proceed with trials when the accused is unable to be present in person. There are also restrictions on the ability of unrepresented in-custody accused persons to plead via audioconference when videoconferencing facilities are not readily available in the correctional institution. In the context of the pandemic such restrictions raise even more concerns.

Actions taken in light of this document in response to the challenges and concerns mentioned above should reflect the guiding principles referenced above. Similarly, the presentations of 31 July 2020 offered several ideas that could support not only adaptations to the new realities of the COVID-19 pandemic, but lasting improvements for access to justice. A core theme was to consider how existing, holistic services supporting Indigenous peoples' engagement with the justice system – such as those currently being developed through the [BC First Nations Justice Strategy](#), or those offered by [Native Counselling Services of Alberta](#) – could be magnified to reach

¹ This principle takes its inspiration in part from the work of Richard Susskind in *Online Courts and the Future of Justice* (Oxford University Press, 2019), Part II: Is a Court a Service or a Place?

more people through thoughtful and creative use of technology. The BC First Nations Justice Council has recommended formation of a **Virtual Indigenous Justice Centre** capable of delivering legal advice and advocacy, services related to addictions and mental health, and additional information and support to Indigenous persons interacting with the justice system, including victims. This Centre would parallel services already provided through brick-and-mortar facilities established under the BC First Nations Justice Strategy, but extend the reach of those services to remote communities through internet, telephone, and other communications technology.

Complementing the expansion of virtual resources, the resource persons suggested that the establishment of **liaison officers** in northern, remote and Indigenous communities could assist greatly in facilitating community interaction with the justice system. The roles of liaison officers could include:

- Setting-up and operating local technology to properly connect each community to the wider justice system, facilitate communication with court officials, enable private and secure access to counsel, and facilitate local participation in remote court proceedings;
- Advising court officials of community concerns and needs prior to the arrival of circuit judges, court staff, counsel, or other “outside” participants in court proceedings;
- Liaising with local health authorities, local governments, and court officials to help ensure that any court proceedings conducted within each community are responsive to community concerns.

A notable element of this liaison role is that it engages both the delivery of court services using remote technology (e.g., a liaison officer could assist in providing a secure community linkage for participation in a remote hearing and/or make available a tablet or computer terminal for private conversations with counsel), and the delivery of in-person court services by helping to facilitate circuit hearings. The Action Committee notes that several judges responsible for the conduct of circuit hearings in remote communities have acknowledged the value of having designated community members to liaise with the courts, facilitate communication and mutual understanding, and assist with local logistics for the coordination of court hearings.

There is work being done in relation to the administration of justice, whether through the nationally-available Indigenous Courtwork Program and Indigenous Justice Program or local restorative justice initiatives. The development of liaison officer positions should build upon these existing efforts whenever possible and complement them. Recognizing that communities vary widely in their existing resources and needs, community liaison officers might be established in a number of ways. In some cases, their functions could be added to the existing roles of community officials and service providers, such as those involved in various forms of Indigenous Courtwork Program. In other cases, liaison officer positions might be developed with local input from band councils, health service providers, and government agencies. Many communities have networks of expertise and service delivery into which this liaison function could be efficiently incorporated. The Action Committee suggests that this idea be explored by appropriate government and community decision-makers, taking account of the unique resources and circumstances of individual communities and the need to ensure standard training and orientation in order to maintain consistency. In all cases, any action taken to respond to the pandemic must be consistent with advancing reconciliation with Indigenous Peoples based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.