

**Action Committee
on Court Operations
in Response to
COVID-19**



**Progress
Report
2022-2023**



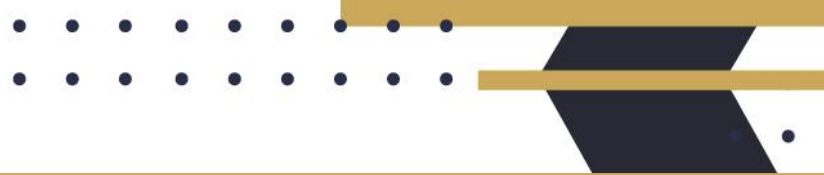


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MESSAGE FROM CHIEF JUSTICE WAGNER

It is hard to believe that the Action Committee on Court Operations in Response to COVID-19 has just completed its third year. When the Honourable David Lametti, former Attorney General and Minister of Justice of Canada, and I convened the Committee's first meeting in May of 2020 it was amidst an acute public health emergency.

The public health situation has since changed dramatically, but the Action Committee remains integral to the justice system's continued recovery from the pandemic's longer lasting effects. As I have shared with international colleagues on numerous occasions, the Action Committee is a shining example of how the judiciary and the executive can collaborate in a respectful way and come together to discuss challenges and exchange promising practices.

This has been a year of evolution for the Committee. As we cautiously turn our attention away from COVID-19 as a public health emergency and towards court modernization, we retain the opportunity to use what we have learned during the pandemic - about our justice system's resiliency, innovation, and collaboration - and apply these lessons to both longstanding and emerging challenges.

For example, over the past year the Action Committee continued to highlight a broad array of best practices that courts might consider when faced with case backlog and delays. It has also emphasized the benefit of broad collaboration when addressing challenges in the justice system, supported by successful examples from courts across Canada. I am also proud that the Action Committee remains committed to addressing the enormous toll the pandemic has taken on the mental health and wellness of court personnel.

In my opinion, the true value of the Action Committee is its ability to draw on the expertise and lived experiences of a wide array of partners, from guest speakers who appeared before the Action Committee, to the Chief Justices, judges, court and justice system personnel consulted by our Technical Working Group this past year. We remain indebted to your time and knowledge. I also extend my thanks to the Honourable David Lametti for co-founding and co-chairing this Committee, the Honourable J. Michael MacDonald, the chair of our Technical Working Group, the Honourable Shannon Smallwood, the chair of our burgeoning and vital Indigenous Advisory Group, and our Secretariat. Finally, I want to acknowledge Canada's many judges and countless court staff who have yet again demonstrated their dedication in trying times this year. The Action Committee exists to highlight your good work for the benefit of all courts and the people they serve.

I am so pleased that the Action Committee will continue into the near future. I look forward to ongoing dialogue with the new Attorney General and Minister of Justice of Canada, the Honourable Arif Virani, the other members of the committee, and the myriad partners who help us better understand how to deliver justice to those in need as we move forward with modernization and innovation.



MESSAGE FROM MINISTER VIRANI, INCOMING CO-CHAIR

As I assume the role of Attorney General and Minister of Justice of Canada, it is my pleasure to join the Right Honourable Richard Wagner as co-chair of the newly renamed Action Committee on Modernizing Court Operations. Since its inception in 2020, this Committee has demonstrated how leaders across the justice system can come together to improve the functioning of Canada's courts for the benefit of court users.

Through this year of change, the Action Committee continued to produce crucial guidance for courts at a crossroads between an immediate pandemic response and longer-term planning towards recovery and modernization. We examined how virtual hearings might play a present and future role as we consider new ways of delivering justice efficiently and effectively. We also published a repository of best practices to minimize court backlogs and delays, highlighting various ways in which our courts, and their dedicated judges, staff and justice partners, work diligently to remove barriers to justice for court users.

I am pleased that in continuing its mandate, the Action Committee has welcomed diverse voices to the table. The Indigenous Advisory Group, chaired by the Honourable Shannon Smallwood, and comprised of Indigenous justice-system professionals from across the country, will play a crucial role in helping the Action Committee better consider the historic barriers that the justice system has posed for Indigenous people. I foresee the Indigenous Advisory Group's work dovetailing with the Government of Canada's commitment to Reconciliation and the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act* and I am encouraged by this partnership.

I join this Committee at an opportune time, as it shifts its focus towards the future. We plan to address some important topics in the year to come, such as user-centred justice, and the Indigenous Advisory Group will add significant value to our work. I look forward to both adding my perspective to these discussions and learning from the other members and the many individuals who contribute to the Action Committee's work.

INTRODUCTION

While public health measures in response to COVID-19 were lifted gradually over this past year, the pandemic's effects continued to impact daily life, including in the justice system. In its third year, from April 2022 to March 2023, the Action Committee has, like the courts and justice system professionals it supports, adapted to this evolving landscape.

In the spring of 2022, members of the Action Committee agreed to continue its work until the fall of 2024 at the earliest. While the health and well-being of all court users remained one of its bedrock considerations, the Action Committee gradually shifted its focus to addressing the legacies of the pandemic, including the use of technology in the courts and strategies to reduce backlog and delays. By sharing lessons learned and best practices on these topics, the Action Committee is helping to pave the way towards court modernization and improved access to justice.

With this continued mandate comes a responsibility to ensure that Action Committee's guidance reflects a broad and representative array of perspectives and experiences. Accordingly, the Action Committee has worked with Indigenous partners to create an Indigenous Advisory Group that will work with the Action Committee to incorporate Indigenous perspectives in its guidance. Relatedly, the Action Committee will strive to solicit and incorporate the perspectives of other equity seeking groups.

To complement this transition, the Action Committee reviewed and updated its [Terms of Reference](#) to ensure they captured the planned





scope of its work and operations. In addition to reducing the Action Committee’s focus on health and safety protocols tied to the specific demands of the COVID-19 pandemic, the Terms of Reference highlighted the Action Committee’s commitment to consider the legacy effects of the pandemic and acknowledge that, though an extraordinarily difficult and demanding time, it also led to unprecedented innovation in the courts, as well as new and creative partnerships. The Action Committee also added Reconciliation with Indigenous peoples to its Key Principles and Considerations.

Amid this evolution, the Action Committee has remained committed to its role as a hub for coordination and collaboration. It has continued to work with partners across the Canadian justice system to highlight best practices adaptable to individual courts to assist them in delivering justice.



CREATION OF AN INDIGENOUS ADVISORY GROUP

In recognition of the unique position of Indigenous peoples in Canadian society, and the challenges they have historically faced in accessing the Canadian justice system, which were heightened by the COVID-19 pandemic, the Action Committee established an Indigenous Advisory Group (IAG). This was done in consultation with Indigenous partners to ensure Indigenous perspectives are adequately considered in the action committee's ongoing mandate and work.

The IAG will use its collective professional and lived experiences to consider and contribute to Action Committee publications. The IAG will also identify and prioritize research topics of particular interest to Indigenous persons who engage with the courts, and develop related guidance for the Action Committee's consideration and publication. The IAG will integrate the Committee's Core Principles and Perspectives into its work.

The IAG is chaired by the Honourable Shannon Smallwood, Chief Justice of the Supreme Court of the Northwest Territories, and its membership comprises

- Judges from the British Columbia Court of Appeal, the Ontario Superior Court of Justice, and the Nova Scotia Supreme Court
- Executives from the BC First Nations Justice Council and Aboriginal Legal Services (Ontario)
- Indigenous Courtwork professionals from the Native Counselling Services of Alberta, Yorkton Tribal Council (Saskatchewan), Native Para-Judicial Services of Quebec, Makivik Justice Department (Quebec), and the Carcross/Tagish First Nation (Yukon)
- A representative of the Elsipogtog Health & Wellness Centre (New Brunswick)

With its membership in place, the IAG met for the first time on March 23, 2023 and broadly discussed the year and potential work ahead. Going forward, the IAG will endeavour to meet monthly in pursuit of its [mandate](#). The Action Committee looks forward to working closely with the IAG in the coming years to develop non-prescriptive guidance that better reflects the experiences of Indigenous persons who engage with the courts.

ACHIEVEMENTS

As it transitioned to its forward-looking mandate, the Action Committee nevertheless maintained its practice of consulting broadly with federal and provincial/territorial partners, as well as judicial and other justice system leaders, to share and amplify the excellent work that courts across Canada are doing in the wake of the pandemic.

The Action Committee's work for April 2022 to March 2023 fell within four areas of focus that support the overarching goal to both mitigate the lasting effects of the pandemic on access to justice and continue to modernize the justice system with the needs of court users at the forefront:

- **SUPPORTING COURT RECOVERY**
 - **MINIMIZING BACKLOG AND DELAYS**
- **PROMOTING COURT MODERNIZATION**
 - **INTEGRATING MODERN TECHNOLOGY**
- **PROMOTING COURT MODERNIZATION**
 - **INCREASING ACCESS TO JUSTICE**
- **PROTECTING THE HEALTH AND SAFETY OF COURT USERS AND PERSONNEL**

For each area of focus, the Action Committee heard from judicial and justice sector leaders who were implementing promising practices in courts across Canada. As a result, the Action Committee published guidance and recommendations to support courts in implementing their own processes and reforms.





Supporting Court Recovery – Minimizing Backlog and Delays

Minimizing court backlogs and delays - both historical and caused by pandemic restrictions - has been a priority for the Action Committee since its inception. Just as in years past, the Action Committee continues to identify unique approaches to reducing backlog and delays and to highlight them for the benefit of all courts and court users.

- **Best Practices in Minimizing Backlog and Delays:** Drawing upon its [Orienting Principles for Reducing Backlog and Delays](#), the Action Committee published an extensive [Repository of Promising Practices](#) adopted by courts and justice partners across the country. These practices relate to areas of focus such as addressing the diverse needs of justice participants, promoting broad collaboration, improving case management and early resolution, eliminating unnecessary court appearances, and sharing and pooling of resources.
- **Successful Backlog and Delay Reduction in Manitoba Family Court:** Following an insightful presentation by leaders from both the judiciary and executive, the Action Committee developed a [Case Study](#) outlining successful backlog and delay reduction strategies in the Family Division of the Manitoba Court of King’s Bench, as well as Manitoba’s complementary and expansive family justice modernization strategy. Action Committee members lauded these collaborative, though distinct, approaches to increasing access to justice for individuals seeking family law solutions.





Promoting Court Modernization – Integrating Modern Technology

The story of courts in the age of COVID-19 is one of technological change, particularly in the widespread adoption of virtual hearings. Though no longer a public health necessity in Canada's courts, virtual hearings have proven useful in a variety of circumstances and most, if not all, courts are considering how to deploy them efficiently and effectively into the future as an added tool to promote access to justice. Pursuant to extensive outreach with the judiciary and other court personnel, the Action Committee published extensively in the area of virtual hearings this past year.

- **Virtual Hearings - Considerations for Future Use:** In the summer of 2022, the Action Committee published a suite of five complementary documents that courts might consider as they decide how and when to use virtual hearings:
 - An outline of [Orienting Principles](#) that may assist judicial leaders as they establish or update policies and practices relating to the mode of hearing in their courts. The four key principles are,
 - The justice system exists to serve the people
 - There is no one-size-fits-all solution
 - Technology is a tool, rather than an end in itself, and
 - Effectively adopting virtual hearings involves doing things differently.

This publication concludes with a helpful collection of virtual hearings guidance produced by Canadian courts and legal professional organizations.

- [Operational Considerations](#) that build upon the Orienting Principles by detailing the potential benefits and drawbacks of virtual hearings depending on the particular context of the proceeding and the needs of the parties. This publication balances these considerations under four broad categories that consider access to the courts, the tension between public access and privacy and security of hearing participants, the effect of virtual hearings on the participants, and the integrity of the court process itself.
- Taking this balancing process a step further, a [Checklist of Considerations](#) was developed to assist judges, court administrators, counsel, and parties in applying the operational considerations in specific proceedings or situations to help determine the most appropriate mode of hearing.

- A descriptive overview of relevant considerations and a chart that compares the [Functionalities and Settings](#) of three widely used virtual hearings platforms by courts, taking into account different types of hearing participants and observers. Designed with the virtual hearing administrator in mind, areas of focus include screening, admitting, and removing participants, assigning or customizing, and enabling or disabling interactive features.
- An outline of [Areas for Potential Further Study](#) that the Action Committee identified as fertile ground for additional consideration in assessing the use and impacts of virtual hearings, especially as courts continue to modernize and consider how virtual hearings fit into those modernization plans.
- **Virtual Bail Roadmap:** Virtual hearings continue to play a crucial role in criminal proceedings, especially where accused persons are detained far from judicial centres or where courts may not sit daily. This year, in collaboration with the Provincial Court of British Columbia, the Action Committee published a [Virtual Bail Roadmap](#). Inspired by the court's Northern Bail Pilot Project, and building upon the change leadership and management principles previously published by the Action Committee, this roadmap highlights key building blocks to design and implement virtual bail hearings successfully around geographic and technological challenges, in collaboration with other justice sector partners, to improve access to justice while reducing court delays.





Promoting Court Modernization – Increasing Access to Justice

Though modernization is often synonymous with technology, court modernization entails so much more than just hardware and software. A modern justice system should be accessible to all and responsive to the needs of a large and diverse population of court users. Responding to those needs involves assessing and adapting court processes while soliciting the views of a wide range of interested parties to ensure all relevant perspectives are considered.

- **Multi-stakeholder collaboration:** A hallmark of Canada’s pandemic experience has been the ongoing collaboration across the justice system. Building upon its previously published [Orienting Principles on Reducing Backlogs and Delays](#), the Action Committee developed a tip sheet of [Best Practices and Lessons Learned from the Pandemic on multi-stakeholder collaboration](#). This document outlines the key benefits and elements of successful collaboration, illustrated by examples from many of Canada’s courts and justice system actors. Annexed to this publication is a Case Study detailing the Ontario Courts Accessibility Committee, which has been operating for fifteen years to support greater accessibility for people with disabilities in the Ontario courts.





Protecting the Health and Safety of Court Users and Personnel

While the COVID-19 pandemic may have waned as an acute public health emergency, the Action Committee has not lost sight of the importance of maintaining the health, safety, and wellbeing of court users and personnel. Indeed, a lasting lesson from the pandemic is that promoting the physical and mental wellbeing of those working in the courts is essential to providing quality access to justice for all court users.

- **Mental Health in COVID-affected Courts:** Building upon the general principles outlined in its previous [Mental Health Communiqué](#), the Action Committee published a tip sheet of [Best Practices for Promoting Mental Health and Wellness in Canadian Courts](#). The tip sheet focuses on individual actions that court leaders can take to support mental health and wellness in their workplace. Crucially, this publication addresses vicarious trauma and provides recommendations to support the adoption of a trauma-informed lens to prevent or address the risks of exposure to traumatic information in court proceedings. The Action Committee also updated its [Inventory of Mental Health and Wellness Resources](#), with new resources on vicarious trauma.
- **Updating Health and Safety Publications:** Additionally, the Action Committee worked alongside the Canadian Centre for Occupational Health and Safety (CCOHS) to update all 16 of its [health and safety publications](#) to reflect current science and best practices that courts can adapt to their operations in times of need.



THE YEAR AHEAD

To reflect the fact that court modernization will now be a significant element of its mandate, the Committee will continue to operate under the name of **Action Committee on Modernizing Court Operations**.

With court modernization now embedded firmly within its mandate, the Action Committee intends to further explore the integration of modern technology in the courts; the ways in which modernization can increase access to justice; how the perspectives of equity-seeking groups and user-centered design might assist in those goals; and how to support emergency preparedness in the courts.

Overarching considerations for this work will include continuing to minimize backlogs and delays, and, as necessary, protecting the health and safety of court users. As always, the Action Committee will benefit greatly from the continued openness and collaboration of its many justice partners. The Action Committee will also seek to ensure that this work reaches more interested parties in the justice sector.

In the year ahead, the Indigenous Advisory Group will contribute its unique and important vantage point to complement the Action Committee's court modernization work by pursuing new lines of inquiry and knowledge sharing to assist courts in their continued efforts to learn from the pandemic and improve court operations.





ACKNOWLEDGMENTS

The Action Committee wishes to thank the following groups and individuals, all of whom contributed their time and expertise this past year to the important and ongoing work of ensuring that Canada’s courts remain open, accessible, and responsive to the needs of all Canadians. Your assistance has been invaluable:

- The many speakers who appeared before the Action Committee
- Heads of Court Administration (HoCA)
- Technical Working Group
- Federal Commissioner for Judicial Affairs
- Canadian Centre for Occupational Health and Safety
- Public Health Agency of Canada
- The numerous judges, legal professionals and other justice system actors consulted in the course of the Action Committee’s work
- Former members who stepped away from the Action Committee this past year: Premier David Eby of British Columbia; Madam Justice Renée Thériault; and Deputy Minister of Justice and Deputy Attorney of Canada, François Daigle



MEMBERSHIP OF THE ACTION COMMITTEE

As of March 31, 2023

RIGHT HONOURABLE RICHARD WAGNER

Chief Justice of Canada (Co-Chair)

HONOURABLE DAVID LAMETTI

Minister of Justice and Attorney General of Canada (Co-Chair)

HONOURABLE GEOFFREY MORAWETZ

Chief Justice of the Ontario Superior Court of Justice
Representative of the Canadian Judicial Council

HONOURABLE MARY MOREAU

Chief Justice of the Court of King's Bench of Alberta
Representative of the Canadian Judicial Council

HONOURABLE LISE MAISONNEUVE

Chief Justice of the Ontario Court of Justice and
Chair of the Canadian Council of Chief Judges

HONOURABLE SHANNON SMALLWOOD

Chief Justice of the Supreme Court of the Northwest Territories
Chair of the Indigenous Advisory Group

HONOURABLE NIKI SHARMA

Attorney General of British Columbia

SHALENE CURTIS-MICALLEF

Deputy Minister of Justice and Deputy Attorney General of Canada

JEREMY AKERSTREAM

Deputy Minister of Justice and Deputy Attorney General of Manitoba
Representative of the Heads of Court Administration

HEATHER JEFFREY

President of the Public Health Agency of Canada

STÉPHANIE BACHAND

Executive Legal Officer, Supreme Court of Canada
(member ex officio)



SUPPORT STRUCTURE

The Action Committee continues to be expertly supported by its Technical Working Group, whose membership includes, as of March 31, 2023

- a former Chief Justice of Nova Scotia
- the Executive Legal Officer of the Supreme Court of Canada
- the Commissioner for Federal Judicial Affairs, in his capacity as Director of the Canadian Judicial Council
- the Assistant Deputy Minister, Courts, Manitoba Justice, as a representative of the Heads of Court Administration
- officials from the Canadian Centre for Occupational Health and Safety and
- employees of Justice Canada

Pursuant to the direction and advice of the Action Committee, the Technical Working Group, with assistance from a Secretariat comprised of counsel and other professionals employed by Canada's Department of Justice, develop the agenda for each Action Committee meeting, identify appropriate guest speakers to participate in discussions, and draft documents for the Action Committee's approval.

Moreover, the Technical Working Group consults with various partners to ensure that it has current and relevant information and is aware of best practices for Action Committee consideration. As in years past, this outreach included many of Canada's Chief Justices, sitting judges, the Heads of Court Administration, the Canadian Centre for Occupational Health and Safety, court staff, and legal professionals from the public and private bar.