

2021-2022 Progress Report

Action Committee on Court Operations in
Response to COVID-19



Canada 

TABLE OF CONTENTS

MESSAGE FROM CHIEF JUSTICE WAGNER.....	2
MESSAGE FROM MINISTER LAMETTI.....	3
INTRODUCTION.....	4
ACHIEVEMENTS.....	6
• PROTECTING THE HEALTH AND SAFETY OF COURT USERS AND PERSONNEL.....	7
• ADDRESSING THE IMPACT OF COVID-19 ON MARGINALIZED COURT USERS.....	8
• SUPPORTING COURT RECOVERY BY REDUCING BACKLOG AND DELAYS.....	9
• SUPPORTING COURT RECOVERY BY INTEGRATING MODERN TECHNOLOGY.....	10
MEMBERS OF THE ACTION COMMITTEE.....	11
OPERATIONS.....	12
• SUPPORTING STRUCTURE	12
• CONSULTATIONS AND INFORMATION GATHERING.....	12
LOOKING TOWARDS THE FUTURE	13
ACKNOWLEDGMENTS	14

MESSAGE FROM CHIEF JUSTICE WAGNER

Since its inception in May 2020, I have had the pleasure of co-chairing the Action Committee on Court Operations in Response to COVID-19 with the Honourable David Lametti, Attorney General and Minister of Justice of Canada. The continued evolution of the pandemic, along with both the challenges and opportunities it has presented to the courts, have created an environment in which the work of this Committee remains incredibly relevant today.

The Action Committee has been a valuable forum for me to share concerns and best practices with both judicial colleagues and members of the federal and provincial/territorial executive branches. It has also been a key source of up-to-date national information from top experts on the COVID-19 public health crisis, a fact that has allowed us to respond appropriately to the emerging public health situation through the successive waves of the pandemic.

Over the last year, the Action Committee worked closely with the Heads of Court Administration, the Public Health Agency of Canada and the Canadian Centre for Occupational Health and Safety to provide coordinated guidance as the pandemic continued to evolve. We have also had the opportunity to acknowledge the toll that the ongoing strain of the pandemic has put on the mental health of all Canadians, including of many court staff and users. And we have been able to support courts as they continued to operate both in-person and virtually and began to address pandemic-related backlogs and delays by producing orienting principles on both Change Leadership and Management and on Backlog and Delay Reduction. The Action Committee has also published a range of materials concerning the exercise of the open courts principle in a virtual environment.

The Action Committee has benefitted from hearing from a wide range of guest speakers, as well as from the input of Chief Justices and Judges and court administrators from across the country who have met with our Technical Working Group or responded to requests for information they circulated. We are extremely grateful to all those who took the time to share their perspectives and experience with us, as well as to our Technical Working Group, chaired by the Honourable J. Michael MacDonald, and our Secretariat, for their dedicated support. And finally, I am continually impressed by the dedication of the judges and court staff from across Canada who have worked tirelessly under such difficult circumstances. I offer you my heartfelt thanks as well.

I look forward to continuing to work with Minister Lametti and the other members of the Action Committee in continuing to support the courts of Canada as they work tirelessly to deliver justice in the aftermath of the pandemic.

MESSAGE FROM MINISTER LAMETTI

It has been my privilege to continue to co-chair the Action Committee on Court Operations in Response to COVID-19 with the Right Honourable Richard Wagner, Chief Justice of Canada during our second year of operation.

In the past year, the prolongation of the pandemic has created new challenges for courts across Canada. I am impressed by the commitment and leadership that every single member of the Action Committee has demonstrated in rising to those challenges.

The Action Committee works to support and collaborate with both the executive and judicial branches as they fulfill their respective responsibilities for the administration of justice. To that end, we have heard from judges and court administrators from across the country who are charting a way forward for their courts and have shared many of these practices more broadly. Inspiring practices in such areas as managing change, addressing pandemic-related backlogs and delays, and supporting self-represented litigants can be found in all levels of court across the country and are the basis of many of the Action Committee's publications.

The pandemic has greatly disrupted the daily operations of the courts. In doing so, it has shed light on pre-existing challenges affecting access to justice that have, in turn, been magnified by the crisis. At the same time, it has also given us an opportunity to reimagine a justice system that would serve Canadians more effectively and equitably. My hope for the Action Committee is that we will continue to amplify those practices that have been developed in response to the pandemic that bring us closer to that goal, while supporting courts as they seek to address the elements of this crisis that undermine it.

I would like to thank the members of the Action Committee for their devotion to our work. I would also like to highlight the work of the Technical Working Group, chaired by the Honourable J. Michael MacDonald, and the Secretariat that supports the work of the Action Committee. Finally, I want to offer my sincere gratitude to the judges, the provincial and territorial ministers responsible for justice and attorneys general, and the many court officials who have worked so diligently for over two years now to continue to serve the Canadian people despite the disruptions caused by the pandemic.

INTRODUCTION



As the COVID-19 pandemic continued to pose a challenge to essential services across Canada, including the courts, the Action Committee on Court Operations in Response to COVID-19 had a busy second year of operations. Pursuant to its **mandate** and guiding principles, the Action Committee continued to meet every month to develop non-prescriptive guidance and share best practices across Canadian courts. This included the development of a range of published products, including tip sheets, communiqués, case studies, and orienting principles.

The mandate of the Action Committee includes:

- Providing national guidance to support the restoration and stabilization of court operations in all jurisdictions;
- Promoting coordination and collaboration, facilitating information sharing, and supporting the identification of common principles and best practices;
- Focusing primarily on the immediate need to restore and stabilize court operations (in-person judicial proceedings) taking into account minimum health and safety thresholds and appropriate long-term protocols to do so in a manner that protects the health and safety of court users and officials; and
- Ensuring the consistency of its national guidelines with parallel, medium-term planning toward the modernization of Canada's justice system and improvement of access to justice.

A number of key principles guide the Action Committee, including that:

- The needs of Canada's most vulnerable people and communities, and of those most severely impacted by the COVID-19 pandemic, must be accounted for.
- The impacts inflicted by the COVID-19 pandemic on the court system and its users provide an opportunity for lasting improvement, resilience to better withstand future challenges, and modernization.

Furthermore, the Action Committee has identified a number of **Core Principles and Perspectives** that guide all of its work. In addition to principles that touch upon public health considerations, the Action Committee is committed to promoting fundamental principles of the justice system, including open courts; access to justice and the rule of law; and judicial independence.

In its first year of operations (2020-21), the Action Committee focused primarily on supporting the adaptation of public health measures to the context of Canadian courts. In the 2021-22 fiscal year (April 2021 to March 2022), by contrast, courts faced the continued evolution of the pandemic coupled with the need to address the effects of almost two years of disrupted operations, including mounting backlog and delays and the fast-tracked implementation of technology. As in year one, the Action Committee continued to address the disproportionate effects of the pandemic on certain court users in its second year.

In all of its work, the Action Committee endeavoured to promote coordination and collaboration, facilitate information sharing, and support the identification of common principles and best practices while supporting court modernization and improved access to justice for all. To this end, the Action Committee consulted broadly with federal and provincial/territorial partners and judicial and administrative leaders within the justice system, and sought to share the good work courts across Canada are doing to address the challenges of the pandemic.

ACTION COMMITTEE BY THE NUMBERS

	2021-2022	TOTAL
Meetings of the Action Committee	12	26
Guest Speakers	31	48
Documents Published	10	33
Documents Revised	10	10



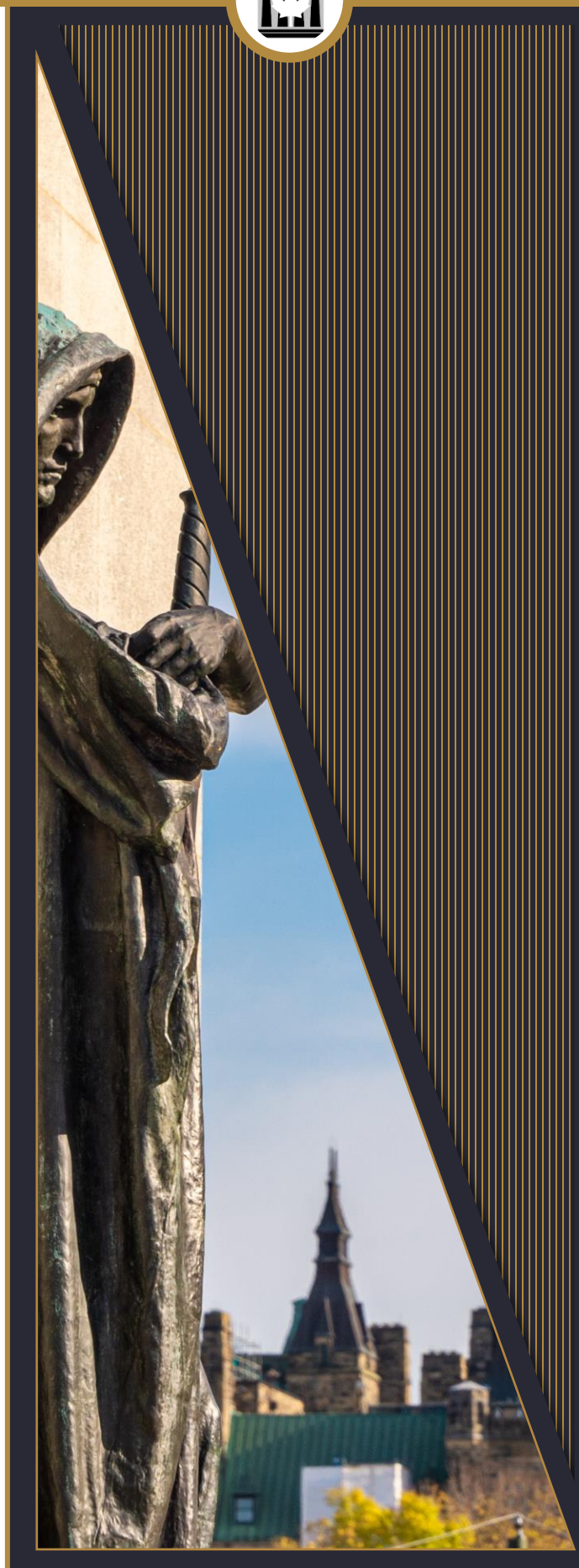
ACHIEVEMENTS



To fulfill its mandate, the Action Committee's work for 2021-2022 fell under four areas of focus, which each support the overarching goal of equitably restoring and stabilizing court operations across Canada.

- **PROTECTING THE HEALTH AND SAFETY OF COURT USERS AND PERSONNEL**
- **ADDRESSING THE IMPACT OF COVID-19 ON MARGINALIZED COURT USERS**
- **SUPPORTING COURT RECOVERY BY REDUCING BACKLOG AND DELAYS**
- **SUPPORTING COURT RECOVERY BY INTEGRATING MODERN TECHNOLOGY**

Under each area of focus, the Action Committee heard from public health and policy experts, as well as judicial and justice sector leaders who were implementing promising practices in courts across Canada, and published guidance and recommendations to support courts in implementing their own processes and reforms.



PROTECTING THE HEALTH AND SAFETY OF COURT USERS AND PERSONNEL



During this fiscal year, many courts began to resume in-person operations that were suspended, restricted, or moved online in the early days of the pandemic. However, as we continued to live with COVID-19 and as the pandemic, as well as scientific information about it, continued to evolve, there was a clear and ongoing need to adapt relevant guidance so that it could be appropriately applied within the context of the courts. At the same time as the need to apply measures to protect the physical health of court users and staff with the pandemic remained, there was an increasing awareness of the toll that the uncertainty and disruptions arising from the pandemic have taken on the mental health of many in the court system.

Link to the Action Committee's Mandate: A key reason for creating the Action Committee was to provide national guidance on the immediate need to restore and stabilize court operations in a manner that protects the health and safety of court users and staff. Materials produced under this area of focus support this primordial goal.

TOPICS

SAFE AND ACCESSIBLE COURTS:

With the cooperation of public health partners, the Action Committee updated its [Orienting Principles on Safe and Accessible Courts](#), along with other [Health and Safety Guidance](#), this year to reflect evolving understandings about the best ways to reduce the transmission of COVID-19 in a court setting.

THE IMPACT OF VACCINATION ON COURT OPERATIONS:

As vaccines became available to the public, the Action Committee published a [Communiqué](#) recommending the maintenance of public health measures in courts, followed by a [Tip Sheet](#) outlining considerations that judicial leaders could review when deciding whether to amend their COVID protocols in light of increased vaccination in the community.

MENTAL HEALTH AND COVID-19 IN THE COURTS:

The Action Committee recognizes the toll that the pandemic has taken on the mental well-being of many people engaged in the courts. To this end, it published a [Communiqué](#) highlighting the importance for judicial leaders to focus on wellness; build awareness to reduce stigma; provide support and care to those who are facing mental health challenges; and lead by example. The communiqué was supplemented by an [Inventory of Mental Health and Wellness Resources](#).

ADDRESSING THE IMPACT OF COVID-19 ON MARGINALIZED COURT USERS



TOPICS

SPECIALIZED COURTS:

The pandemic has created a number of challenges for individuals who access specialized court programs, such as drug treatment or mental health courts, as these programs rely on personal relationships between the court and accused persons, as well as strong ties to social services, to function. The Action Committee published an [Overview of the Impact of COVID-19](#) on these courts, as well as a [Case Study of Nova Scotia's Wellness Courts](#) to illustrate the challenges and promising practices to address them.

ACCESS TO INTERPRETERS AND TRANSLATED COURT INFORMATION:

Non-majority language speakers are often at the intersection of a range of vulnerabilities that can affect their access to justice. Recognizing these challenges, the Action Committee examined the effects of the pandemic on [Interpretation and Translation Needs](#) of court users.

SELF-REPRESENTED LITIGANTS:

In 2006, the Canadian Judicial Council (CJC) published a statement of principles to guide courts in their interactions with self-represented litigants and accused persons, followed by comprehensive Handbooks for self-represented litigants in criminal, civil, and family matters, published in 2021. These principles have taken on increased importance in the past two years, since rapid changes in court procedures can increase the challenges these individuals face in accessing the courts. The Action Committee published a [Tip Sheet](#) outlining special considerations concerning the application of the CJC's Principles in light of pandemic-related change. Further work concerning the needs of self-represented litigants is ongoing.

The COVID-19 pandemic has affected all members of society, but it is widely recognized that it has most severely affected those who were already marginalized. As such, any response to COVID-19 must assess its impact on marginalized communities, so that mitigation and recovery efforts can effectively consider their needs. In the context of the courts, there is evidence that marginalized persons have disproportionately faced challenges regarding access to justice during the pandemic. This year, the Action Committee turned its attention to the effects of the pandemic on specialized court programs and their participants, as well as on those who require interpretation or translation support to participate in court proceedings or to access court services. It also began examining the special needs of the many court users who do not have legal representation.

Link to the Action Committee's Mandate: The Action Committee is mandated to support the stabilization of court operations, and has committed to doing so while upholding the fundamental values of our justice system, including access to justice. As recognized in the key principles articulated in the Committee's [Terms of Reference](#), true stabilization cannot happen in line with those values unless the needs of all court users, including those who are marginalized, are taken into account. As such, activities under this heading have examined the effects of the pandemic on various marginalized communities and sought to identify operational solutions and best practices, so that courts are equipped to consider their needs when developing recovery plans. This area of focus also aligns with the Action Committee's mandate to ensure the consistency of its national guidelines with parallel planning toward the improvement of access to justice.

SUPPORTING COURT RECOVERY BY REDUCING BACKLOG AND DELAYS



Reducing delays and backlogs was already a key challenge for many courts in Canada before operations were disrupted by the COVID-19 pandemic. Now, modified operations have exacerbated the problem in many courts, particularly at the trial level. Addressing the rate at which cases proceed as well as any backlog of cases caused by the pandemic are among the most urgent challenges facing the courts in the current stage of pandemic recovery. The Action Committee continues to hear from courts and other stakeholders across Canada about innovative approaches taken to address backlogs and delays and to share information about many of these promising practices.

Link to the Action Committee's Mandate: The Action Committee is mandated to support the stabilization of court operations. However, operations cannot stabilize if the fallout of the pandemic, including increased delays and backlogs resulting from pandemic-related restrictions, is not addressed. Furthermore, examining potential solutions to minimize backlog and delays aligns with the Action Committee's mandate to ensure the consistency of its national guidelines with parallel, medium-term planning toward the modernization of Canada's justice system, and supports the Key Principle of supporting lasting improvement, resilience to better withstand future challenges, and modernization.

TOPICS

CHANGE MANAGEMENT AND LEADERSHIP:

In recognition of the level of change that will be required for the courts to address pandemic-related backlogs and delays effectively, as well as the change fatigue that many in the system are facing, the Action Committee published [Orienting Principles on Leading and Managing Change In the Courts](#).

BACKLOG AND DELAY REDUCTION:

The Action Committee began its work on backlog and delay reduction with the publication of [Orienting Principles](#) to support court recovery, followed by a Repository of Best Practices that showcases the excellent work taking place across Canadian courts to put those principles into practice. Work is ongoing to examine best practices in specific areas of backlog and delay reduction, such as enhanced case management, judicial dispute resolution, and measuring backlogs and delays.

SUPPORTING COURT RECOVERY BY INTEGRATING MODERN TECHNOLOGY



The response to COVID-19 resulted in an unprecedented adoption of technology in the courts. The use of that technology continues to be necessary to some degree for public health reasons, but is also being considered for longer-term adoption. Furthermore, technological solutions have been, and will continue to be, a key element to addressing the backlogs and delays that the pandemic has caused or exacerbated with pandemic-related backlog and delays. For these reasons, it was timely to start taking stock of these changes to determine how best to use technological tools, as well as which tools should remain in place when they are no longer necessary for public health reasons.

Link to the Action Committee's Mandate: As the pandemic continues to ebb and flow, taking stock of how to effectively use technological tools is a crucial element of restoring and stabilizing court operations. Further, understanding the areas and ways in which technology is being used successfully is crucial to the Action Committee fulfilling its mandate to ensure the consistency of its guidance with parallel planning toward the modernization of Canada's justice system, and aligns with the Key Principle of supporting lasting improvement, resilience to better withstand future challenges, and modernization.

TOPICS

APPLICATION OF THE OPEN COURTS PRINCIPLE IN THE VIRTUAL CONTEXT:

The Action Committee has produced a number of tip sheets outlining challenges and best practices when virtual access to courts is granted to the public, including one outlining [Privacy and Security Considerations](#) and another one presenting [Options and Implementation Scenarios](#).

VIRTUAL COURTS – PRACTICES AND PRINCIPLES:

After two years, the Canadian courts have gained a wealth of knowledge about what works, and what does not, in the virtual context. As a first step towards capturing this learning, the Action Committee has produced a repository of [Tools and Resources on Virtual Hearings and Court Services](#) and an overview of [Challenges and Solutions for Trial Courts](#). In addition, the Action Committee has been consulting widely so that it can capture lessons learned from the virtual experience and provide courts with tools and guidance they can adapt to their own contexts.

MEMBERSHIP OF THE ACTION COMMITTEE



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, representing the Canadian Judicial Council

Honourable Mary Moreau

Chief Justice of the Court of Queen's Bench of Alberta, representing 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 David Eby

Attorney General of British Columbia

Nathalie G. Drouin (April - July 2021) — François Daigle (July 2021 - present)

Deputy Ministers of Justice and Deputy Attorney Generals of Canada

Dr. Harpreet S. Kochar

President of the Public Health Agency of Canada

Renée Thériault

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



Supporting Structure

The Technical Working Group that supports the Action Committee includes:

- 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
- an Assistant Deputy Minister of the Ministry of Justice and the Attorney General of Saskatchewan (Courts and Tribunals Division) as a representative of the Heads of Court Administration (HoCA)
- officials from the Canadian Centre for Occupational Health and Safety (CCOHS) and
- employees of Justice Canada.

A Secretariat, housed in Justice Canada, supports the work of the Action Committee and its Technical Working Group. Based on direction from the Action Committee, the Technical Working Group and the Secretariat 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. The Action Committee is also assisted by the HoCA network in understanding how the pandemic has impacted court operations throughout Canada and in identifying innovative solutions and best practices to help restore or maintain these operations.

Consultations and Information Gathering

The Technical Working Group consulted with PHAC, Health Canada, and the Canadian Centre for Occupational Health and Safety in the development of all of its health and safety-related products. It also gathered valuable information about both the challenges facing courts and the promising practices being implemented across Canada through surveys of HoCA and outreach to Chief Justices and Judges from across Canada. The valuable input of these partners helped to ensure that the work of the Action Committee was timely and relevant.



LOOKING TOWARDS THE FUTURE

The Action Committee is continuing to consult on the use of virtual hearings and the effects of the pandemic on case backlogs and delays in courts across Canada. While these have begun with the judiciary and court administration through HoCA, the Action Committee plans to continue to expand their scope to a more diverse group of court stakeholders. These consultations will allow us to continue to highlight interesting practices and develop relevant non-prescriptive guidance as Canadian courts continue to adapt to the pandemic and its aftermath.



Acknowledgments

The Action Committee wishes to thank the following:

The many speakers taking the time to appear before the Committee;

Heads of Court Administration (HoCA);

Technical Working Group;

Federal Commissioner for Judicial Affairs;

Canadian Centre for Occupational Health and Safety (CCOHS);

Health Canada;

Public Health Agency of Canada (PHAC); and

All those whose work during the pandemic has been dedicated to ensuring that our courts across the country can remain open; safeguarding trial fairness and access to justice; and prioritizing the health and safety of justice system participants. Your contribution and willingness to adapt to an ever-changing environment is recognized and valued.