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FOR INFORMATION  
FILE #: 2020-005809  
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**TITLE: Canadian Bar Association Task Force on Justice Issues Arising from  
COVID-19 Conference Call of June 18, 2020 /  
Téléconférence du 18 juin 2020 du Groupe de travail de l'Association du  
barreau canadien sur les questions découlant de la COVID-19**

**EXECUTIVE SUMMARY**

- On June 18, 2020, you will participate in the third meeting of the Canadian Bar Association (CBA) Task Force on Justice Issues Arising from COVID-19 (agenda, Annex 1).
- [REDACTED]
- The Action Committee on Court Operations in Response to COVID-19 last met on June 5, 2020. It discussed draft guidance for resumption of criminal jury trials, and was briefed on New Brunswick's progress in planning for the resumption of both jury and non-jury criminal proceedings.
- The Committee will meet again on June 19, 2020, to consider specific guidance materials to support resumption of criminal jury trials, developed by the Technical Working Group that supports the Committee. If approved, the documents will be publicly released soon after.
- [REDACTED], as well as on the array of justice issues due to the pandemic cited in recent journals (Annex 4).

Submitted by (Sector name):

Policy Sector

Lead in the DM Team (Name):

Kevin Gray



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## MEMORANDUM FOR THE ASSOCIATE DEPUTY MINISTER

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### Canadian Bar Association Task Force on Justice Issues Arising from COVID-19 Conference Call of June 18, 2020

#### ISSUE

On June 18, 2020, you will participate in the third meeting of the Canadian Bar Association (CBA) Task Force on Justice Issues Arising from COVID-19 (agenda, Annex 1).

#### BACKGROUND

This Task Force meeting will focus on: i) evolving issues in the shutdown, ii) access to justice and links between various initiatives, and, iii) next steps, i.e., dissemination and promotion of the Task Force's Statement of Principles, and planning for the July 16 meeting.

#### *Evolving issues in the shutdown (Annex 3)*

Most jurisdictions have drafted guidelines for resumption of in-person court operations, and several have begun—or will resume—these operations between now and early July. In-court operations will, however, remain at much reduced levels for the foreseeable future, with reliance on remote hearings continuing. Appellate courts have generally fared much better than trial courts, and many are close to resuming their regular docket, albeit from remotely.

Despite some technological challenges, remote hearings have generally gone well. Courts and courts administration are demonstrating innovation and flexibility.

Jury trials remain the biggest challenge going forward. With the exception of New Brunswick, which will pilot a jury trial in mid-August, jury trials have been suspended in all jurisdictions until September at the earliest. The guidance of the Action Committee on Court Operations in Response to COVID-19 will assist in planning the resumption of jury trials.

Both the CBA Task Force and the Action Committee on Court Operations are focused on resumption of the courts, making operations safe for all involved. Civil society is not represented in either group. The National Action Committee on Access to Justice in Civil and Family Matters (NAC), on the other hand, has tried to hear the public voice by including equity-seeking organizations in its membership; reporting publicly through its annual report on the justice-related Sustainable Development Goals; holding public events and Webinars; and using social media. Patricia Hebert, who will speak at the June 18 meeting, is the CBA representative on the NAC and a member of its Steering Committee. The Deputy Minister is also a member of the NAC.

FPT ministers/deputy ministers of justice and public safety also have been discussing how to fully operationalize courts. Ministers spoke of their jurisdictions' immediate needs and court modernization efforts at their two April meetings, acknowledging the need to shift mindsets. FPT DMs meeting will discuss the impacts of the pandemic on access to justice and court recovery at their July 7-9, 2020 meeting.

Meanwhile, new initiatives are emerging. For example, the Advocates' Society's Modern Advocacy Task Force was launched in early June, and will make recommendations to reform the Canadian justice system.

The pandemic is having broad effects on the justice system, as noted in recent journal articles (Annex 4).

Continued collaboration among all sectors of the justice system is important in responding to the pandemic's effects. The CBA Task Force's efforts may benefit from interaction with civil society, as the NAC has endeavoured.

## **Resource Implications**

N/A

## **Communications Implications**

N/A

## **CONCLUSION**

The Government is making Pprogress in preparing for the resumption of in-person court operations and approval will be sought from the Action Committee on Court Operations in Response to COVID-19 on specific guidance materials to support resumption of criminal jury trials.

## **ANNEXES**

Annex 1: Meeting Agenda



Annex 4: Justice Canada COVID-19 and Justice articles, Week of June 1, 2020

### **PREPARED BY**

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*Criminal Law Policy Section, National*

*Litigation Sector, Research and Statistics*

*Division and the Access to Justice Secretariat*



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

**CANADIAN BAR ASSOCIATION  
TASK FORCE ON JUSTICE ISSUES ARISING FROM COVID-19**

**CONFERENCE CALL**

June 18, 2020

12:00 noon to 1:00pm EDT

Join URL: <https://zoom.us/j/98975061416>

**Prior to joining conference call, please confirm your participation by email to [lyned@cba.org](mailto:lyned@cba.org).**

Chair: Vivene Salmon, President of the Canadian Bar Association

I.	Welcome	12:00
II.	Evolving Issues in the Shutdown  a) How have operations evolved b) Successes/challenges in moving forward	12:00 to 12:10
III.	Theme/guiding principle: Access to justice and coordination between various initiatives.  a) Update on the Action Committee on Court Operations in Response to COVID-19 ( <b>François Daigle</b> ). b) Update on the National Action Committee on Access to Justice (Guest speaker: <b>Patricia Hebert</b> , CBA Representative on the National Action Committee on Access to Justice). c) Discussion on how all these initiatives can work together ( <b>All</b> )	12:10 to 12:55
IV.	Next steps  a) Task Force Statement of Principles (approved - see Appendix 1) <ul style="list-style-type: none"><li>• Dissemination and promotion</li></ul> b) July 16 meeting: Focus on sustainable measures/how to harness technology without compromising access and confidence in the justice system. <i>Guest speaker:</i> Karen Eltis, University of Ottawa Center for Law, Technology and Society/Faculty of Law and author of book "Courts, Litigants and the Digital Age" (2016)	12:55 to 13:00

**Next Meeting:** Thursday, July 16, 2020, 12:00 noon to 1:00pm EDT

**APPENDIX I**  
**STATEMENT OF PRINCIPLES**  
**CBA TASK FORCE ON JUSTICE SYSTEM ISSUES ARISING FROM COVID-19**

**I. Introduction**

The **CBA Task Force on Justice Issues Arising from COVID-19** was established to assess the immediate and evolving issues for the delivery of legal services resulting from the COVID-19 pandemic. The Task Force will also report on current changes to the justice system and make recommendations on how courts, tribunals and other dispute resolution processes can become more responsive to deliver their services differently to meet the needs of stakeholders both during and after the pandemic.

**II. Principles**

The Task Force's work will be guided by the following principles:

**Access to justice:** The focus of the task force is on the people who seek justice and the ability of the legal and justice systems to advise and serve them in resolving their issues.

**Impact on self-represented litigants:** New measures and practices should address the needs, concerns, safety and security of self-represented litigants while also avoiding negative impacts on them. Wherever possible, judicial and tribunal procedures, technology, and decisions, should be easier to access, use, and read, to remove barriers to justice otherwise faced by self-represented litigants.

**Health and safety:** The health and safety of all justice system participants is paramount, and compliance with all applicable public health restrictions is essential.

**Innovative, effective and efficient:** The justice system has been stretched to its limit for years (backlog, unreasonable delays, etc.). This crisis has shown that the system needs meaningful reforms – short and long term - that emphasize innovation, effectiveness and efficiency.

**Sustainable (post pandemic) measures:** The task force has a particular focus on the opportunity to identify new and innovative measures and practices that are sustainable and can be permanently implemented to modernize and address long-standing challenges in the legal and justice system's ability to better serve the people who need to access it.

**Open courts:** All measures must maintain the transparency of the judicial process in accordance with the open court principle recognized under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. Open courts are essential to a well-functioning democracy and judiciary and must be safeguarded against threats that would weaken its proper functioning.

**Coordination and communication among justice system partners:** All justice stakeholders have a role to play and must work together to identify and implement all measures as soon as possible. Effective communication among all stakeholders and jurisdictions is essential to share and maximize best practices.

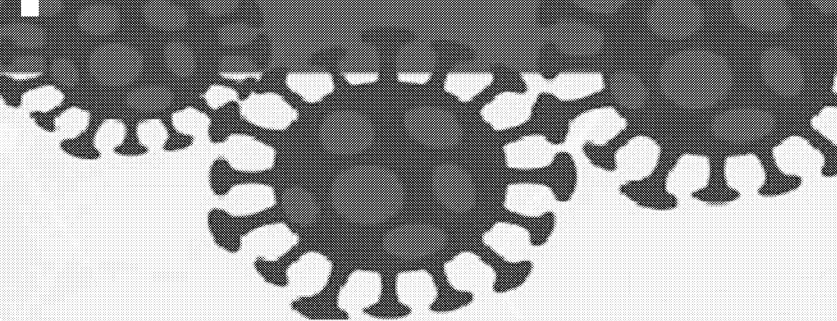
**Investments and resources:** The task force will address investments and resources required to implement new measures, practices, and technologies. Investments and resources are required to address immediate needs, medium term issues and longer-term systemic changes to deliver justice more effectively.

**Pages 8 to / à 17**  
**are withheld pursuant to section**  
**sont retenues en vertu de l'article**

**21(1)(a)**

**of the Access to Information Act**  
**de la Loi sur l'accès à l'information**





# Justice Canada COVID-19 & Justice

Week of June 1<sup>st</sup>, 2020

## COVID and the Law

- Public safety measures have affected established domestic and international legal order. Prof Louise Langevin is leading a team of 15 law professors at Université Laval to examine various legal issues arising from this pandemic.

## Human Rights & Discrimination

- How will increased enforcement of public behaviour affect visible minorities? We do not know as race based information is not being systematically collected by police. For example, Toronto police issued 132 tickets, 12 summons and 1,009 "cautions" for contravention of COVID-19 measures between April 10 to May 31. Bylaw officers also have the power to enforce physical distancing. But no race data is available.
- There has been a spike in concerns regarding citizens' rights to gather balanced against enforcement of current public health measures sparked by anti-racism and police brutality protests. In Alberta, the province's energy minister recently took heat from climate change activists for her remark that "it's a great time to build a pipeline because public health restrictions (will) limit protests against them,"

## Crime in the Pandemic

- The Canada Mortgage and Housing Corporation

## Aboriginal Law & Indigenous Justice

- Indigenous leaders are angry that Ottawa is delaying its national action plan on MMIWG because of the COVID-19 pandemic. This is especially concerning because COVID-19 has had a disproportionate affect on Indigenous peoples.

## Courts

- Quebec courts have reopened for non-urgent cases, but some changes worry legal experts. More cases will be heard virtually and there is less seating permitted in each courtroom (so fewer from public). Judges will decide which cases get priority and which ones can be heard in person. How will jury trials be conducted?
- The Supreme Court will begin virtual hearings through Zoom starting in June — and members of the public will be allowed to watch.

## Freedom of Religion

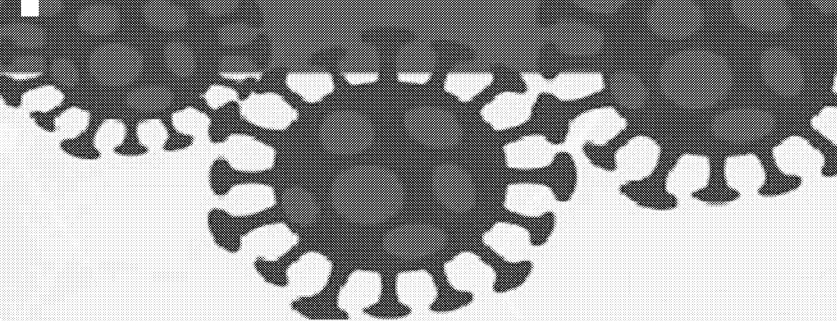
- An Alberta-based legal group is threatening a court challenge to fight for the religious rights of Orthodox Jews in Ontario who, because of gathering-size restrictions, have been unable to worship according to tradition during the pandemic. Other religious leaders have sent a

## Medical Assistance

- A Quebec court ruled that Canada must review its dying (MAID) law to fix unconstitutional. Delay problematic.

## Privacy and Cyb

- Cybercriminals are trying to steal information and other health-care professionals experts are calling for impose national cybersecurity measures in health-care sector and measures.
- The Department of National Health is of using COVID-19 to v Parliament and Canadian widespread concern about failing to respond to ac requests since the crisis.
- The federal privacy commission current laws are strong rights of Canadians if COVID-19 contact trac



# Justice Canada COVID-19 & Justice

Week of June 1<sup>st</sup>, 2020

## COVID and the Law

- <https://www.thelawyersdaily.ca/business/articles/19372/academics-studying-effects-of-covid-19-pandemic-on-law>

## Human Rights & Discrimination

- <https://ipolitics.ca/2020/06/01/toronto-police-city-bylaw-not-collecting-data-on-race-when-enforcing-covid-rules/>
- <https://theconversation.com/do-you-have-a-right-to-protest-the-coronaviruss-impact-on-freedom-of-assembly-139363>

## Crime in the Pandemic

- <https://www.lapresse.ca/covid-19/2020-06-01/le-crime-organise-profitera-t-il-de-la-crise-financiere>

## Aboriginal Law & Indigenous Justice

- <https://nationalpost.com/pmnn/news-pmn/canada-news-pmn/federal-delay-of-mmiwg-action-plan-sparks-dismay-ahead-of-inquiry-anniversary>
- <https://globalnews.ca/news/7015803/mmiwg-action-plan/>

## Courts

- <https://montreal.ctvnews.ca/quebec-courts-reopen-but-new-rules-worry-some-about-justice-unfolding-in-the-dark-1.4964206>
- <https://www.cbc.ca/news/politics/supreme-court-virtual-hearings-1.5596520>

## Freedom of Religion

- <https://nationalpost.com/news/legal-group-threatens-court-challenge-over-right-of-ontario-orthodox-jews-to-worship-during-pandemic>

## Medical Assistance

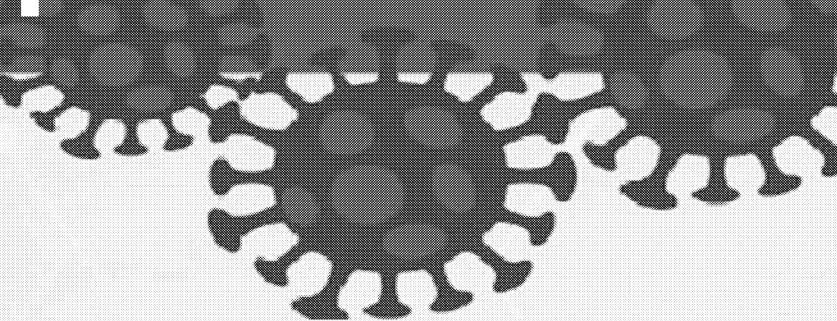
- <https://ipolitics.ca/2020/06/01/covid-19-changes-puts-medical-assistance-in-question>

## Privacy and Cyberspace

- <https://www.cbc.ca/news/scotia/hospitals-health-canada-federal-government-fund-1.5596520>
- <https://www.ctvnews.ca/politics/federal-department-accused-of-withhold-info-from-parliament-1.5596520>
- <https://www.itworldcanada.com/watchdog-doubts-current-privacy-protection-protects-canadians-1.5596520>

## Immigration & Refugees

- <https://policyoptions.irpp.org/magazine/spring-2020/reassessing-canadas-immigration-policy/>



# Ministère de la Justice

## La COVID-19 et la justice

Semaine du 1<sup>er</sup> juin

### La COVID et la loi

- Les mesures de sécurité publique ont eu des répercussions sur l'ordre juridique établi à l'échelle nationale et internationale. Mme Louise Langevin dirige une équipe de 15 professeurs de droit de l'Université Laval chargée d'examiner les divers problèmes juridiques découlant de la pandémie.

### Les droits de la personne et la discrimination

- Quelle incidence une surveillance accrue des comportements en public aura-t-elle sur les minorités visibles? Nous ne le savons pas puisque les renseignements fondés sur la race ne sont pas systématiquement recueillis par la police. Par exemple, la police de Toronto a délivré 132 contraventions, 12 sommations et 1 009 « avertissements » pour des violations des mesures liées à la COVID-19 entre le 10 avril et le 31 mai. Les agents d'application des règlements ont aussi le pouvoir de faire appliquer les mesures de distanciation physique. Cependant, les données fondées sur la race ne sont pas disponibles.
- Les manifestations contre le racisme et la brutalité policière ont donné lieu à une escalade des préoccupations quant à l'équilibre entre le droit des citoyens de se réunir et l'application des mesures de santé publique actuelles. En Alberta, la ministre de l'Énergie de la province a récemment soulevé l'ire des militants contre les changements climatiques en déclarant que c'était « le bon moment pour construire un pipeline puisque les mesures de santé publique empêchent les manifestants de se réunir ».

### Le crime durant la pandémie

- La semaine dernière, la Société canadienne

### Le droit et la justice autochtones

- Les dirigeants autochtones sont en colère parce qu'Ottawa retarde la mise en œuvre de son plan d'action national relativement aux FFADA en raison de la pandémie de COVID-19. Cette situation est particulièrement préoccupante étant donné l'incidence disproportionnée qu'a eue la COVID-19 sur les Autochtones.

### Les tribunaux

- Les tribunaux du Québec ont recommencé à traiter les affaires non urgentes, mais certains changements inquiètent les experts juridiques. Davantage d'affaires seront instruites virtuellement et il y aura moins de places assises dans chaque salle d'audience (donc moins de membres du public pourront être présents). Les juges établiront l'ordre de priorité des affaires et décideront lesquelles pourront être instruites en personne. De quelle façon les procès devant jury seront-ils menés?
- La Cour suprême commencera à instruire des affaires virtuellement au moyen de Zoom en juin, et les membres du public seront autorisés à observer.

### La liberté de religion

- Un groupe juridique de l'Alberta menace d'entreprendre une procédure judiciaire afin de lutter pour les droits religieux des juifs orthodoxes de l'Ontario qui, en raison des limites quant à la taille des rassemblements, n'ont pas été en mesure de célébrer le culte conformément à la tradition durant la

### L'aide médicale à

- Un tribunal du Québec gouvernement du Canada sur l'aide médicale à mort pour corriger les parties qui sont inconstitutionnelles. Les cas d'AMM sont pro

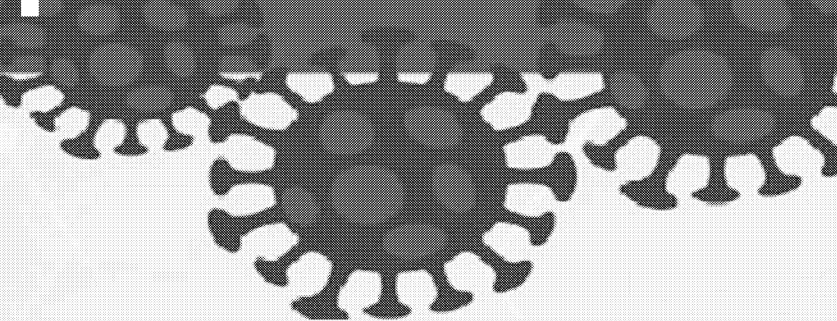
### La vie privée et la

- Les cybercriminels tentent de recueillir des renseignements sur les données sur la santé. Des agences de santé et des experts en sécurité d'Ottawa à imposer des normes de cybersécurité dans le secteur et à financer de meilleures pratiques.
- Le ministère de la Défense a annoncé d'utiliser la COVID-19 pour recueillir l'information au Parlement canadienne. Le fait que les députés ne répondent pas aux demandes de renseignements depuis le début de la crise est une préoccupation généralisée.
- Le commissaire à la protection de l'information du Canada doute que les lois actuelles soient suffisamment solides pour protéger les Canadiens si les gouvernements utilisent d'une application les contacts des personnes pendant la COVID-19.

### L'immigration et

- La COVID-19 a entraîné des changements dans le processus d'immigration. Les lois actuelles ne sont pas adaptées à la situation actuelle et sont critiquées par plusieurs





# Ministère de la Justice

La COVID-19 et la justice  
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- <https://www.itworldcanada.com/article/privacy-watchdog-doubts-current-law-completely-protects-canadians-for-covid-apps/431502>

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