



FOR INFORMATION  
FILE #: 2020-006710  
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**TITRE/TITLE: Canadian Bar Association Task Force on Justice Issues Arising  
from COVID-19 July 16, 2020 Zoom call / Appel par Zoom du  
16 juillet 2020 du Groupe de travail de l'Association du barreau canadien  
sur les questions de justice découlant de la COVID-19**

**EXECUTIVE SUMMARY**

- On July 16, 2020, you will participate in the fourth meeting of the CBA Task Force on Justice Issues Arising from COVID-19 (agenda, Annex 1).
- Although you are not expected to present at this meeting, you may wish to mention litigation-related issues due to the pandemic (Annex 2) and recent work of the Action Committee on Court Operations in Response to COVID-19, which is co-chaired by the Minister of Justice and the Chief Justice of Canada.
- Access to justice is an increasingly important issue given the impact of the pandemic on Canadians, especially the most vulnerable. Other legal issues, including those related to employment, housing, insurance, and family custody have also arisen due to the pandemic. At the last Task Force meeting on June 18, Patricia Hébert, a member of the Action Committee on Access to Justice in Civil and Family Matters, updated on the Committee's work (Annex 3).
- You may wish to mention the importance of collaboration among all entities working to reinvigorate the justice system and improve access to justice, including the CBA Task Force, the Action Committee on Court Operations in Response to COVID-19, the Action Committee on Access to Justice in Civil and Family Matters and The Advocates' Society's Modern Advocacy Task Force.
- Justice officials would be interested in hearing of Task Force members' views on the use of remote technology for full criminal trials, including for the presentation of witness evidence.
- To inform your discussions, Annex 4 contains links to journal articles on an array of justice issues due to the pandemic, as of the week of July 6, 2020.

Submitted by (Sector name):

Policy Sector

Lead in the DM Team (Name):

Kevin Gray

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## MEMORANDUM FOR THE DEPUTY ASSISTANT DEPUTY ATTORNEY GENERAL

### Canadian Bar Association Task Force on Justice Issues Arising from COVID-19 July 16, 2020, Zoom call

#### ISSUE

On July 16, you will participate in the fourth meeting of the CBA Task Force on Justice Issues Arising from COVID-19 (agenda, Annex 1). Although you are not expected to present at this relatively short meeting, you may wish to mention litigation-related issues due to the pandemic (Annex 2) and the work of the Action Committee on Court Operations in Response to COVID-19, which is co-chaired by the Minister of Justice and the Chief Justice of Canada. Either or both these points could be mentioned during the second agenda item.

#### BACKGROUND

After the introduction, this Task Force meeting has three agenda items: item 2, evolving issues in the shutdown; item 3, how to harness technology without compromising access to and confidence in the justice system (guest speaker); and item 4, next steps such as planning for the August 13 meeting where a guest speaker will address the theme of open courts.

#### *Agenda item 2 - Evolving issues in the shutdown*

At the last meeting on June 18, 2020, the Associate Deputy Minister delivered an update on the Action Committee on Court Operations in Response to COVID-19. Since then, the Action Committee released national-level guidance documents on all phases of the jury trial process in a July 2 news release. The links in the news release are to the Canadian Centre for Occupational Health and Safety, which is temporarily housing the documents until the Action Committee's portal is ready later this month. Once ready, the portal will be posted on the website of the Commissioner for Federal Judicial Affairs Canada.

In addition to the Action Committee's tip sheet, most jurisdictions have drafted guidelines for resumption of in-person court operations, and such operations are beginning to resume. In-court operations, however, will remain at much reduced levels for the foreseeable future, with continuing reliance on remote hearings.

Appellate courts have generally fared much better than trial courts, and many are close to resuming their regular docket, albeit remotely.

Jury trials remain a challenge. New Brunswick plans to pilot a jury trial in mid-August. Other jurisdictions have suspended jury trials until September at the earliest.

Litigation issues related to the pandemic are being monitored (Annex 2).

Access to justice is an increasingly important issue given the impact of the pandemic on Canadians, especially the most vulnerable. Other legal issues, including those related to employment, housing, insurance, and family custody have also arisen due to the pandemic. At the last Task Force meeting on June 18, Patricia Hébert, a member of the Action Committee on Access to Justice in Civil and Family Matters Steering Committee, updated on the committee's work (Annex 3).

Meanwhile, new initiatives are emerging, for example the Modern Advocacy Task Force of The Advocates' Society.

The pandemic is having broad effects on the justice system, as noted in recent journal articles pertaining to courts, criminal law, sentencing, remand, bail, and corrections as of July 6, 2020 (Annex 4).

***Agenda item 3 - How to harness technology without compromising access and confidence in the justice system***

Guest speaker and University of Ottawa law professor Karen Eltis will talk about harnessing technology to improve the justice system. She is the author of the 2016 book, Courts, Litigants and the Digital Age.

**CONSIDERATIONS**

Continued collaboration among all sectors of the justice system is important in responding to the pandemic's effects. There is a critical need to improve access to justice, especially for vulnerable populations, given conditions exacerbated by the pandemic.

Technology is a frequent question at this table. Justice officials would be interested in hearing of Task Force members' views on the use of remote technology for full criminal trials, including for the presentation of witness evidence.

**Resource Implications**

N/A

**Communications Implications**

N/A

**CONCLUSION**

Progress is being made toward fuller resumption of in-person court operations. Collaboration among all sectors of the justice system, including the CBA Task Force and other committees, is key to progress.

## **ANNEXES**

Annex 1: Meeting Agenda

Annex 2: Background on Evolving Litigation Issues in the Shutdown

Annex 3: Deck on Action Committee on Access to Justice in Civil and Family Matters from June 18, 2020 Task Force Meeting

Annex 4: Justice Canada COVID-19 and Justice articles, Week of July 6, 2020

### **PREPARED BY**

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### **Consulted:**

*Public Law and Legislative Services Sector*

*National Litigation Sector*

*Access to Justice Secretariat*

*Criminal Law Policy Section*

*Research and Statistics Division*



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

**CONFERENCE CALL**

July 16, 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** [REDACTED]

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: How to harness technology without compromising access and confidence in the justice system.  a) Guest speaker: Professor 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) a) Q & A (All)	12:10 to 12:55
IV.	Next steps  August 13 meeting: Open Courts. <i>Guest speaker:</i> David Hutt, executive member of the Canadian Media Lawyers Association and the CBA Entertainment, Media and Communications Section. New technologies and potential impacts on the open court principle.	12:55 to 13:00

**Next Meeting:** Thursday, August 13, 2020, 12:00 noon to 1:00pm EDT

**Pages 6 to / à 7  
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**



Action Committee on Access to  
Justice in Civil and Family Matters

Comité d'action sur l'accès à la  
justice en matière civile et familiale

# Presentation to CBA COVID Task Force

Patricia Hebert, Q.C.

# Outline



Action Committee on Access to  
Justice in Civil and Family Matters

Comité d'action sur l'accès à la  
justice en matière civile et familiale

- The Action Committee
- The 2013 Report
- The Six Principles and How They Resonate
- The Justice Development Goals
- Current AC projects
- Actions and opportunities





Action Committee on Access to  
Justice in Civil and Family Matters

Comité d'action sur l'accès à la  
justice en matière civile et familiale

## The AC Mandate

- High profile national leadership to advance access to civil and family justice in Canada through:

*Awareness*

*Vision*

*Engagement*

*Collaboration*

*Innovation*

- <https://cfcj-fcjc.org/action-committee/>

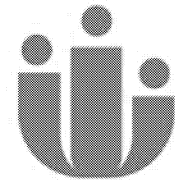
## The 2013 Report

- Urgent need for change
- Call for a “culture shift” based on “Six Guiding Principles for Change
- Call for a more cooperative and collaborative approach
- Articulate Nine Justice Development Goals



Action Committee on Access to  
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## The Six Principles:

- Put the Public First
- Collaborate and Coordinate
- Prevent and Educate
- Simplify, Make Coherent, Proportional and Sustainable
- Take Action
- Focus on Outcomes



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Justice in Civil and Family Matters

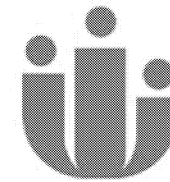
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## Bridging the “Implementation Gap”

- The Nine Justice Development Goals
- Action Committee prepares reporting on Canada’s accomplishments relative to the JDG

[www.justicedevelopmentgoals.ca](http://www.justicedevelopmentgoals.ca)

<p><b>Goal 01</b> <b>Address Everyday Legal Problems</b></p> <ul style="list-style-type: none"> <li>· Educate early</li> <li>· Prevent</li> <li>· Offer a continuum of services</li> <li>· Reflect Canadian society</li> </ul>	<p><b>Goal 02</b> <b>Meet Legal Needs</b></p> <ul style="list-style-type: none"> <li>· Focus on legal needs for everyone</li> <li>· Encourage innovation</li> <li>· Expand scope of legal aid</li> <li>· Focus on access to justice</li> </ul>	<p><b>Goal 03</b> <b>Make Courts Work Better</b></p> <ul style="list-style-type: none"> <li>· Ensure access to courts</li> <li>· Promote Multi Service Centres</li> <li>· Help people who are representing themselves</li> <li>· Manage cases effectively</li> <li>· Be accessible and user-focused</li> <li>· Protect judicial independence</li> </ul>
<p><b>Goal 04</b> <b>Improve Family Justice</b></p> <ul style="list-style-type: none"> <li>· Offer a broad range of services</li> <li>· Promote consensual resolution</li> <li>· Innovate</li> <li>· Restructure family courts</li> </ul>	<p><b>Goal 05</b> <b>Work Together</b></p> <ul style="list-style-type: none"> <li>· Establish coordinated efforts</li> <li>· Include everyone</li> <li>· Be bold; Take action</li> <li>· Work within institutions</li> <li>· Coordinate across Canada</li> </ul>	<p><b>Goal 06</b> <b>Build Capability</b></p> <ul style="list-style-type: none"> <li>· Educate law students and legal professionals</li> <li>· Expand justice education in schools</li> </ul>
<p><b>Goal 07</b> <b>Innovate</b></p> <ul style="list-style-type: none"> <li>· Keep track of what is working</li> <li>· Share good ideas</li> </ul>	<p><b>Goal 08</b> <b>Analyze and Learn</b></p> <ul style="list-style-type: none"> <li>· Develop metrics</li> <li>· Work with researchers in all fields</li> </ul>	<p><b>Goal 09</b> <b>Improve Funding Strategies</b></p> <ul style="list-style-type: none"> <li>· Coordinate to spend money well</li> <li>· Better fund legal aid</li> <li>· Make sure the money lasts</li> </ul>



Action Committee on Access to  
Justice in Civil and Family Matters

Comité d'action sur l'accès à la  
justice en matière civile et familiale

- The Action Committee current projects:
  - Creating an inventory of innovations or changes to legal system operations to help build a national picture, encourage collaboration and inspiration, support research and share activities
  - Communities of Practice – ongoing opportunities for deeper dialogue on specific topics among AC members and extended interested communities



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- The Action Committee current projects:
  - JDG report
  - Communications tools to increase A2J awareness in the public, available in digital, ppt, print
  - The Annual Summit – June-July 2020 in a series of virtual events
  - Regional colloquia (fall 2020) to further collaboration within regions in A2J communities



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## Opportunities?

- JDG report – uses?
- Inventory of innovations - how to contribute & share productively?
- Communities of Practice – next topics?
- Communications tools to increase A2J awareness in the public – use & distribution?
- The Annual Summit – cross promotion?
- Regional colloquia (fall 2020) - joint collaborations?





# Justice Canada COVID-19 & Justice

Week of July 6<sup>th</sup>, 2020

## Courts

- In Ottawa, lawyers and courthouse staff are being required to wear surgical masks inside the courthouse, as a result of deficiencies found in the Plexiglass barriers that were installed to prevent the spread of COVID-19. Masks cover up much the face and could affect how individuals interact with each other (e.g., hard to read non-verbal clues, distraction). There is a possibility that this will affect the administration of justice.
- The government of Manitoba is planning to develop an "Integrated Case Management" system that would help modernize all levels of court and provide better access to justice by using technology to consolidate and share information, provide online access to court records, reduce the use of paper, and feature online dispute resolution. This plan is being applauded by technology experts, who are calling it a state-of-the-art information system.
- The government of British Columbia has proposed a moratorium on civil jury trials and is considering their elimination. Following the Ontario government's discussion about eliminating civil jury trials, the government of British Columbia has reached out to several legal groups to seek their input.
- The Action Committee on Court Operations in Response to COVID-19 released their guidance last week (July 2). The recommendations include the consideration of conference centres or large community centres for jury selections and the re-arrangement of where jurors sit in a courtroom in criminal jury trials.

## Sentencing, Remand and Bail

- Sayeh Hassan, a criminal defence lawyer, argues that many people view conditional sentences as being lenient. Given the impacts of COVID-19 and the strict conditions that almost resemble house-arrest, Hassan is hopeful that one of the takeaways from the pandemic will be a new appreciation for the conditional sentence as a real and serious form of punishment.
- The pandemic could be considered a collateral consequence in sentencing hearings, according to Bobby Russon, a criminal lawyer. In the recent case of R. v. Tasevski 2020 ONSC 3724, the defendant received a one-year reduction of his sentence, as both counsel agreed that serving time in prison during the pandemic was considered a collateral consequence.
- Criminal lawyers are raising concerns over the impact of COVID-19 on ensuring justice for their clients. For instance, by not having the defendant appear before court in person, it becomes easier to reduce the individual to what they are on paper. There are additional concerns over not being able to physically visit clients, as it becomes more difficult for lawyers to inform and advise their clients, and to address time-sensitive matters in legal proceedings.

## Criminal Law

- The Attorney General of Canada and the federal Health Minister are welcoming the endorsement of a holistic approach from Canadian police chiefs to decriminalize drugs for simple possession, given the intensification of the opioid crisis during the pandemic.

## Corrections

- The coalition of Black, Indigenous and legal groups is calling on the Ontario government to release information about the prevalence of COVID-19 in provincial jails as well as information related to the preventative measures taken to reduce the spread of the pandemic.

# Justice Canada COVID-19 & Justice

Week of July 6<sup>th</sup>, 2020

## Courts

- <https://ottawacitizen.com/news/local-news/courthouse-staff-to-wear-surgical-masks-after-deficiencies-found-in-barriers/wcm/ce1cc4b7-a72b-4ffd-8417-ee876c551f9a/>
- <https://www.bbc.com/future/article/20200609-how-face-masks-affect-our-communication>
- <https://www.thelawyersdaily.ca/articles/19901/experts-weigh-in-on-manitoba-s-step-toward-modernizing-courts?category=access-to-justice>
- <https://vancouver.sun.com/news/ian-mulgrew-eby-struggling-to-maintain-access-to-justice-in-b-c>
- <https://www.thelawyersdaily.ca/articles/19945/federal-committee-releases-guidance-on-jury-trial-reboot->

## Criminal Law

- <https://www.nationalobserver.com/node/21211>

## Corrections

- <https://www.cbc.ca/news/canada/hamilton/covid-jails-1.5641880>

## Sentencing, Bail and Remand

- <https://www.thelawyersdaily.ca/articles/19977/rethinking-conditional-sentences-post-covid-19-sayeh-hassan?category=access-to-justice>
- <https://www.thelawyersdaily.ca/articles/19898/covid-19-and-the-difficulties-for-ontario-inmates-sarina-nezhadian?spotlight=1>