



Action Committee on Court Operations in Response to COVID-19

COMMUNIQUÉ: FOCUSING ON MENTAL HEALTH AND WELLNESS IN THIS DIFFICULT TIME

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.

The Effects of the Pandemic on Mental Health

The negative mental health effects of the COVID-19 pandemic and related disruptions have been well documented,ⁱ with Canadians reporting declining psychological and emotional well-being since March 2020. While access to vaccines has provided some relief and, for some people, the greater flexibility afforded by remote work has actually reduced stress, the ongoing environment of uncertainty continues to take its toll on the mental health of many across the country. Members of the judiciary, legal professionals and court staff have not been immune to the circumstances that have led to these negative outcomes: Canada's courts perform an essential service to the country, and underwent rapid and drastic transformation so that court operations could continue despite the pandemic. Electronic filing and document handling, virtual meetings and enhanced alternative dispute resolution became routine rather than the purview of early adopters. As much as the increased deployment of these measures can be celebrated as long overdue progress towards court modernization, it is important to note that these new ways of working also acted as an added stressor for some in the justice system on top of natural feelings of apprehension induced by the pandemic.

Research is also showing that the pandemic is having a differential impact on Canadians, exacerbating existing societal inequitiesⁱⁱ: isolation of people with disabilities; greater job losses among recent immigrants; people experiencing homelessness put at greater risk; additional pressure on primary caregivers--often women--of young children, the elderly and people with disabilities; and the day-to-day challenges already faced by Indigenous and racialized people. For these individuals, the strain of the pandemic has been added to significant stressors already present in their lives, with the potential to have an even greater impact on their mental health. People with pre-existing anxiety-related or mood disorders are also being more negatively affected by the pandemic compared to those without such pre-existing disorders.ⁱⁱⁱ This cannot help but affect Canada's court system. To begin with, those with pre-existing mental health challenges or other marginalizing factors are disproportionately represented amongst Canada's court users.^{iv} Moreover, court staff, legal professionals, and judges also experience a number of daily pressures that can negatively impact mental health. For example, many people in the court system continue to juggle remote work, including virtual proceedings, with caregiving duties in the home. Some members of the judiciary, who by the nature of their work already work independently, have become even more isolated during the pandemic. More generally, research suggests that, for a variety of reasons, there is a greater incidence of depression, anxiety and substance use in the legal profession than in the general population.^v Taking all of these factors together, it stands to reason that the COVID-19 pandemic may be affecting the mental health of anyone who enters a physical or virtual courtroom.

While the duration of the pandemic is uncertain at this time, what is certain is that as the courts resume full operations and the country transitions out of the pandemic, Canada's justice system will not function exactly as it did before. As we have observed elsewhere, there is now "broad consensus within



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the legal community that the courts must take advantage of this unintended experiment in innovation to both mitigate the lasting effects of the pandemic on access to justice and move the justice system into the 21st century.” Across the country, courts and legal professionals are assessing which processes adopted during the pandemic might usefully be retained, and under what circumstances. Efficiency and effectiveness are important considerations in the context of increased court backlogs and delays caused by the pandemic. But even as these conversations take place, individuals across the sector are expressing real concerns about the effects of all this change on the mental health and well-being of the legal and courts administration communities. After so much rapid adaptation in this crisis, there is a certain amount of “change fatigue,” and the workload ahead may seem daunting. The Action Committee is listening and validates these concerns.

Facing The Challenge

Moving forward, leaders in the courts and legal profession can support mental health and wellness by keeping in mind the following four inter-related pillars of action:

- **focusing on wellness** in the workplace to prevent or mitigate negative impacts on mental health;
- continuing to **build awareness and reduce the stigma** around mental health;
- providing people who are experiencing mental health challenges with the **support and care** they need, based on expert advice; and
- **leading by example.**

We note that many Canadian legal professional organizations have already made mental health and wellness a priority for their current and future efforts. There is no shortage of resources available in these areas, and a preliminary, non-exhaustive inventory of related Canadian resources is appended to this document. While no one-size-fits-all approach to mental health and wellness exists, there are many ideas and best practices put forward by the experts who developed these resources that leaders in the courts and legal profession may be able to adapt where feasible.

Recognizing that the pandemic creates constraints on operations, suggestions the Action Committee wishes to highlight for consideration include the following:

- Demonstrate leadership by initiating conversations about the importance of workplace wellness and mental health to build awareness and help reduce the stigma around mental health. Specifically, recognize that mental health challenges are a matter of human vulnerability and a person’s life circumstances, and not a reflection of character;^{vi}
- Apply a mental health and wellness lens to the development and implementation of policies, programs, procedures and to individual actions, with particular attention to those who may be differentially impacted by them;
- Prioritize and approach post-pandemic transition and workplace changes during the pandemic incrementally, where feasible, according to change management principles;
- Think creatively about ways to manage workload;



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- Where feasible, ensure people have the training and skillset they need to use new technologies and processes that are introduced during the pandemic and/or maintained post-pandemic; and
- Do not forget about mental health and wellness considerations for those employees who continue to work remotely, by choice or necessity.^{vii} To help with feelings of isolation, take the time to connect on a personal and social level with colleagues working remotely.

One of the best ways to acknowledge the enormous human losses our country has sustained from this pandemic is to seize upon the actions we can take to secure our collective health and well-being. We need one another, more than ever. This surely requires a continued focus on access to justice and the needs of marginalized individuals in the court system, and increased compassion and empathy for court users trying to navigate that system in a crisis. For those who work in the justice system, we ask also that you turn the same compassion and empathy on yourselves.

ⁱ The Centre for Addiction and Mental Health, for example, has been conducting regular surveys of Canadians regarding their mental health and substance use during the pandemic: <https://www.camh.ca/en/camh-news-and-stories/a-third-of-canadians-report-anxiety--over-return-to-pre-pandemic-routines>

ⁱⁱ See, for example, Statistics Canada, [A presentation series from Statistics Canada about the economy, environment and society](#) and [COVID-19 in Canada: A One Year Update on Social and Economic Impacts](#). See also Public Health Ontario, "[Health Protection Actions for People Experiencing Homelessness](#)," (February 3, 2021).

ⁱⁱⁱ See, for example, Gordon J.G. Asmundson et al, "[Do pre-existing anxiety-related and mood disorders differentially impact COVID-19 stress responses and coping?](#)" *Journal of Anxiety Disorders* 74: 102271 (August 2020).

^{iv} See, for example, Mental Health Commission of Canada, "[Mental Health and the Criminal Justice System: What We Heard](#)," (2020): p. 1.

^v See, for example, Stephanie Nemeth, "[Addressing the Elephant in the Legal Profession: The Lawyer's Struggle with Mental Health](#)," *Saskatchewan Law Review, CanLIIDocs* 4037 (2019).

^{vi} Doron Gold, "Debunking the Lone Sufferer Myth Once and For All," in [Managing the Second Wave: CPD and Resources on Mental Health and Resilience](#), Toronto Lawyers Association, (February 5, 2021): p. 8.

^{vii} Spencer McDonald and Juliana Orlando Rohr, "Changes in the Canadian Labour Market Resulting from the Pandemic," in Patrick Deustcher, Don Drummond and Juliana Orlando Rohr, "[The Future of Work Post-Pandemic](#)," Queen's University School of Policy Studies, (August 2020): p. 35.