



Action Committee on Court Operations in Response to COVID-19

Core Principles and Perspectives

Overview and Context

The courts are a pillar of Canada's democracy, provide an essential service to Canadians, and offer critical support to economic activity and social integration. Canada's courts have continued to operate throughout the pandemic, giving priority to the most urgent cases and adapting electronic and remote methods to deliver justice to Canadians. Nonetheless, court operations have been significantly curtailed in response to physical distancing and other public health and safety requirements.

The overriding focus of the Action Committee is to help restore court operations in a manner that protects the health and safety of Canadians, using public health advice and expertise as a foundation. This involves accounting for the needs of all Canadians who rely on the justice system, including those whose personal circumstances - such as age, underlying health conditions, or living arrangements - place them at higher risk of contracting or suffering severe effects from COVID-19. Restoration of court operations must drive toward a more modern, responsive and resilient court system.

Since courts are places in which many different people come together - including judges, litigants, court personnel, social service providers, police, media, and members of the public - safely restoring court operations requires awareness of social context and of the different roles and responsibilities that combine to make courts function. Decisions related to the restoration of court operations at both the local and national levels must be informed by a shared understanding of public health and legal principles, reflecting the integrated responsibility and collaboration of multiple actors in the public interest. This document identifies those principles as a framework to guide ongoing collaboration and decision-making.

Principles

The Action Committee has identified the following principles as essential to progressively restoring the operation of Canada's courts while protecting the safety of all people who work in and use the courts. The principles are intended to guide and support, not replace, leadership and decision-making by the judiciary and local officials in response to community needs. The Action Committee is committed to observing these principles as it works to:

- provide national-level guidance based on a common framework of parameters, to enable coordination and consistency in approach;
- facilitate access to essential information, expertise, and health and safety resources for chief justices and courts administration officials as they work to restore and stabilize court operations in their communities;
- highlight best practices and facilitate communication, information-sharing, and collaboration among courts, governments, and communities across Canada, recognizing also that the efforts of individual courts and jurisdictions could yield innovations of national importance;

- ensure that early decisions around resumption of court operations are framed within a wider vision of courts modernization, thus ensuring that measures adopted in response to the pandemic pave the way toward longer term transformation and increased resilience.

The principles draw from the recent statements of Canada's First Ministers, values embodied in Canada's Constitution and the rule of law, and the expertise contributed by key partners in the operation of Canada's courts. They reflect a shared responsibility to place the health and safety of Canadians at the centre of planning, and to ensure that operational decisions are grounded in reliable information, sensitivity to constitutional and social context, and commitment to meeting the needs of all people who rely on the courts.

Public Health Principles

The Action Committee recognizes that Canada's First Ministers have provided a valuable template for restoring areas of economic and civic activity through their *First Ministers' statement on shared public health approach to support restarting the economy*. While the courts represent an independent and operationally distinct sphere of public life, the principles identified by the First Ministers can be adapted to offer useful guidance in the courts setting:

Science and evidence-based decision-making

Decisions in relation to restoring court operations should be based on current public health guidance as advised by public health authorities.

Coordination, collaboration and communication

Continued collaboration and communication are key to ongoing success. Since different jurisdictions may need to move forward at different times and in potentially different ways, it will be important to maintain the coordination and collaboration that has taken place throughout the pandemic. Communication and information-sharing across jurisdictions will allow courts to learn from the experiences and approaches of others.

Accountability and transparency

Each jurisdiction will continue to be accountable to its residents, and will monitor the impacts of measures to restore court operations. Decisions related to court operations must also adhere to applicable legislative and regulatory occupational health and safety requirements. Furthermore, data sharing is critical to understanding the situation across Canada and is essential to informing efforts to restore court operations.

Flexibility and proportionality

Operations should be restored based on levels of community risk and in a controlled and phased manner. Approaches may vary within and between jurisdictions to account for community characteristics and needs, and measures may need to be adapted or re-imposed as conditions on the ground change.

Fundamental Principles of the Justice System

The Action Committee recognizes that fundamental principles arising from the Constitution and from Canada's commitment to the rule of law define an operational landscape unique to the courts, which

must be accounted for in developing court-specific protocols for restoration of operations and recovery from the pandemic. These principles include:

Open courts

Public confidence in the justice system depends on the public's ability to witness the processes and decisions of courts, ensuring their fairness and integrity.

Access to justice and the rule of law

Accessible courts inspire confidence in the justice system, inviting Canadians to approach courts as trustworthy venues for resolving legal issues and alleviating day-to-day hardship. In order to exercise their rights and to ensure that Canada remains a society governed by law, all Canadians must have meaningful and effective access to the courts. This includes timely justice for all court users, and trial within a reasonable delay for those subject to criminal proceedings. This also includes ensuring that measures to restore court operations take into account the needs of all Canadians, including the most vulnerable and those with limited or no access to technology.

Judicial independence

A strong and independent judiciary is fundamental to Canada's democracy and essential to public confidence in the courts and justice system. Judicial independence is instrumental to judicial impartiality and to judges' ability to safeguard individual rights and the Constitution itself; it exists for the benefit of Canadians, not for judges themselves. Chief justices have authority over the functioning of their courts overall, including making decisions on when and how to restore court operations, scheduling, and the assignment of cases. Individual judges have authority over the proceedings assigned to them, including the management of their courtrooms (whether physical or virtual) and participants in the process.

Federalism

The federal division of powers means that both levels of government have key responsibilities in relation to the justice system. Provinces and territories have authority over the administration of justice and the courts in their jurisdictions.

Nexus to the community

Participation in the justice system as a juror, litigant, victim, witness, or accused person should not impose an undue burden of distance from one's home and community; justice should be rendered close to home, and judges themselves should be connected with the communities they serve.

Perspectives

The Action Committee affirms the need for restoration of court operations to follow an integrated approach, in which common principles and a shared commitment to Canadians inform close collaboration among key actors in the administration of justice. It also recognizes that decision-makers must remain responsive to community perspectives and needs. As progressive steps are taken to restore and expand court operations, the Committee encourages engagement with court users and community representatives to assess the inclusiveness, accessibility, and effectiveness of different measures.

Health and Safety Considerations

- Health and safety experts help to define risks, identify appropriate safety measures, and support judges and governments in understanding unique community vulnerabilities or needs, using information about the characteristics of court environments, users, personnel and processes.
- They work to ensure that the expert advice and support they provide is consistent with maintaining the integrity of court processes.
- They base their guidance and advice on the best available scientific knowledge and empirical data, and may adapt guidance and advice as expert knowledge evolves.

Judiciary Considerations

- Judges exercise independent responsibility and control over the cases assigned to them, and must be equipped with the knowledge and resources necessary to ensure the safe conduct of those proceedings.
- Judges must consider how fundamental principles, public safety, and the rights of individuals are best reconciled in the context of each proceeding. This includes balancing innovations such as online access to court hearings against potential risks to vulnerable persons, including children, who may be required to share intimate testimony and personal experiences in court.
- Courts rely on governments to provide adequate resources to ensure effective and efficient operations that guarantee meaningful access to justice for Canadians. This includes the community's interest in the prosecution of criminal cases, where judges must enforce constitutional timelines for the completion of trials while accounting for public safety and other considerations related to the detention or release of accused persons.

Courts Administration Considerations

- Provincial and territorial governments are responsible for courts administration services. Courts administrators ensure administrative support for court operations, including registry functions, judicial and courtroom support, the maintenance of court records and data, interpreter services, jury management, distribution of court orders, enforcement, collection of fines and fees, and the provision of services to the public. Court security and facility management are also provided through government. To deliver this mandate, courts administration employs non-judicial staff and accounts for their safety and rights under collective agreements.
- Courts administrators ensure that court operations comply with official language and human rights requirements within their jurisdictions, including accessibility for persons with disabilities, and implement additional services to suit community needs.
- Court administrators work to ensure equal access to justice in all regions within their jurisdictions, including diverse geographic, physical, and community settings, and assume responsibility for different physical court facilities (dedicated courthouses, leased commercial spaces, temporary community spaces for remote courts, and others).

Conclusion

The safe and effective restoration of operations in Canada's courts is a shared enterprise. While approaches must be tailored to the circumstances of individual jurisdictions and communities, Canadians share a common interest in access to justice, and the COVID-19 pandemic introduced challenges that are national in scope. The Action Committee seeks to support locally-led decision-making by chief justices, courts administration officials, and individual judges by articulating overarching principles, offering national guidance based on the best available data and expertise, and providing a forum for collaboration and sharing of best practices. This will help ensure a harmonious and integrated approach to the resumption of court operations that honours the trust and confidence of Canadians.