



Action Committee on Court Operations in Response to COVID-19

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.

EXAMINING THE DISPROPORTIONATE IMPACT OF THE COVID-19 PANDEMIC ON ACCESS TO JUSTICE FOR MARGINALIZED INDIVIDUALS

Even before we feel the impact at a societal level, access to justice first and foremost affects the individual. Under the Charter, everyone has the right to equal treatment under the law and equal benefit of the law. To deny access to justice is to deny people their dignity, to say that some people are worthy of justice and some aren't.

Lack of access to justice reinforces existing inequities.¹

No matter where you come from, or who you are, our collective aspiration is that you should have the right to the Charter's protections, including the right to make your voice heard. And these rights should never be taken for granted.

Access to justice, of course, lies at the very heart of this vision of Canada. We believe in a country where all Canadians should have an equal right to the law's protections. When we fail individuals or groups on this count, we fail not only them but also undermine our strength as a country.²

Access to justice in Canada is as essential as it is difficult to identify, but efforts to address the issue are increasing, and the ongoing COVID-19 pandemic has underscored, and in some respects compounded or even created, challenges to access to justice for many people in Canada. The impact of the pandemic on access to justice has been disproportionate, affecting certain segments of the population more than others, especially those who are most at risk.

Given this context, the Action Committee wishes to address the issue of the disproportionate impact of the COVID-19 pandemic on access to justice for marginalized individuals, including access to courts and court-related services. As such, through this overview, the Action Committee intends to:

- set out some facts concerning access to justice in Canada;
- describe the situation of marginalized individuals in terms of access to justice and the uneven impact of the pandemic on them;

¹ Right Honourable Richard Wagner, P.C., Chief Justice of Canada, address (7th Annual Pro Bono Conference, delivered at the British Columbia Justice Summit, 4 October 2018), [unpublished] online: <https://www.scc-csc.ca/judges-juges/spe-dis/rw-2018-10-04-eng.aspx>.

² Annual meeting of the Action Committee on Access to Justice in Civil and Family Law Matters, *Notes for an address by The Honorable David Lametti*, [unpublished] online: <<https://www.canada.ca/en/department-justice/news/2019/04/annual-meeting-of-the-action-committee-on-access-to-justice-in-civil-and-family-law-matters.html>> (Montreal: 10 April 2019).



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- offer some insight on the promotion of access to justice for marginalized individuals, including access to courts and court-related services;
- encourage the sharing of knowledge and recent initiatives with respect to access to justice.

The Action Committee has already considered this question in [Restoring Court Operations in Northern, Remote and Indigenous Communities](#), a document that served as a particularly helpful introduction. This overview explores the issue from the perspective of a broader audience and will reiterate some of the applicable elements contained in that introductory document.

1. Access to Justice: An Outline

1.1. Definition

In recent years, definitions of access to justice have proliferated. For its part, the Department of Justice Canada describes it as “[e]nabling Canadians to obtain the information and assistance they need to help prevent legal issues from arising and help them to resolve such issues efficiently, affordably, and fairly, either through informal resolution mechanisms, where possible, or the formal justice system, when necessary.”³ The notion of access to justice is therefore very broad in scope, ranging from the ability to identify the very existence of a legal problem to its satisfactory resolution, including all the steps in between. Access to justice therefore transcends mere access to the court, “it means having confidence that the system will come to a just result — knowing you can respect it, and accept it, even if you don’t agree with it.”⁴ This document is based on this broad interpretation of access to justice.

1.2. An Investment

The costs associated with legal problems are numerous and often difficult to discern. They affect both the litigants and the government. Legal problems impose a variety of monetary costs on individuals, such as legal fees, travel expenses and lost income. Such costs can amount to approximately \$7.7 billion per year in Canada.⁵ There are also non-monetary costs for litigants, which are more difficult to quantify, such as stress-related problems, health issues, work difficulties or family disruptions. In terms of costs for the government, the annual cost of legal problems is estimated to be approximately \$800 million in various benefits (social assistance, employment insurance or health care) directly related to everyday legal problems.⁶ On the other hand, there is evidence that every dollar invested by the government in community legal centres can produce 18 times as much benefit to society⁷ and that every dollar spent on legal aid can represent approximately \$6 in savings in public funds or in other areas.⁸ This suggests that the long-term benefits may well outweigh the costs.

³ Justice Canada, Development of An Access to Justice Index for Federal Administrative Bodies by Susan MacDonald (Ottawa: Department of Justice Canada, 2017).

⁴ *Supra* note 1.

⁵ Lisa Moore, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report*, online: Canadian Forum on Civil Justice <<https://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>>.

⁶ *Ibid.*

⁷ CBA Access to Justice Committee, “Reaching Equal Justice: An Invitation to Envision and Act” (November 2013) online: CBA <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>.

⁸ *Ibid.*



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1.3. Justice at the Heart of Our Daily Lives: the Importance of Taking Action

People in Canada respect each other and the country's social order. Rules govern our behaviour and impose limits on us, whether at work, in our neighbourhood relationships, or even on our roads, to preserve the rights and freedoms of everyone and to ensure some level of social cohesion. At the same time, people inevitably face legal problems. In fact, it has now been established that, over a three-year period, almost half of Canadians over the age of 18 will face a legal problem in their daily lives that they believe is "serious and difficult to resolve"⁹ and, out of this number, 30% of them will experience at least two.¹⁰

The resources available to litigants to resolve their legal problems vary widely. While every problem may have a solution, it is important to be aware of its existence. Legal problems are sometimes more or less easily identifiable, sometimes subsumed by another facet of the problem, which is more obvious to the litigant. For example, the separation of a couple represents first and foremost an emotional personal issue, but also has numerous legal consequences (separation of assets, parenting, etc.). The same applies to a case of discrimination at work (employee rights, employer liability, etc.). While legal issues may appear to be less conspicuous than other aspects of social life — such as health, the economy or education — legal frameworks govern all aspects of life in Canada, with undeniable and diverse effects. For example, employees who experience discrimination in the workplace may, as a result, suffer physical or mental health problems, be forced to go on sick leave or lose their job, which could cause financial hardship that could affect the quality of life for them and their family, including their ability to support their children, and so on. The law prohibits and may remedy the discrimination but also has a role in governing the effects on the employee's family life.

Importantly, the person requiring assistance with a legal problem must first find out which door to knock on to try to solve it, in addition to having the financial means to address it. In short, they must have access to justice, a task that can be more difficult for some individuals, such as those who are marginalized, very often for reasons beyond their control. Moreover, even though the majority of legal problems are resolved prior to reaching a court hearing, a significant number of marginalized individuals must nevertheless interact with the justice system and its services — either because they initiate proceedings or because they are subjected to them.

2. The Situation of Marginalized Individuals During the Pandemic

2.1. Who Are We Talking About?

While problems of access to justice date back to well before the COVID-19 pandemic and affect a large portion of the population across the country, those who are the most marginalized experience greater difficulties and inequities in this regard, and the pandemic has exacerbated their situation. Marginalized individuals are those who, in addition to difficulties everyone experiences in accessing justice, experience additional circumstances, including personal circumstances, that create additional barriers to accessing justice. The following is a non-exhaustive list, in no particular order, of various groups whose members risk being marginalized (or underserved) with respect to access to justice:

- self-represented litigants;
- individuals struggling with addiction or mental health problems;
- seniors;

⁹ *Supra* note 5.

¹⁰ *Ibid.*



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- children;
- single parents;
- individuals who are victims of abuse;
- individuals with low incomes or who are marginalized with regard to their socio-economic circumstances;
- Indigenous people;
- individuals from racialized minorities,
- 2SLGTBQQIA individuals;¹¹
- individuals from linguistic minorities;
- individuals living with a physical or intellectual disability;
- individuals who experience homelessness;
- individuals who have difficulty with or lack easy access to technology;
- individuals who have difficulty reading and writing;
- individuals living in remote areas;
- inmates;
- immigrants and refugees;
- individuals who belong to any other group that may be subject to systematic discrimination.

It is important to note that a person may belong to more than one of the above groups, and worthy pathways to resolution should reflect this reality. For example, it has long been established that, in Canada, women represent both the majority of single parents¹² and the main victims of spousal violence.¹³

The circumstances of these individuals may expose them to a number of different barriers, including: being at increased risk for stress, mental health and addiction problems; not understanding the legal issues they face and the options available to them; not having access to the services of professionals, including lawyers, or the technology that may be required because of the pandemic to interact effectively with the justice system. These circumstances will vary from one marginalized individual to the next, revealing a range of challenges that will need to be understood in order to identify pathways to resolution that are responsive and effective. In other words, they create difficulties for which there is no universal solution. In addition to these barriers, marginalized individuals also face the difficulties inherent to the justice system that may be exacerbated by their own circumstances.

During a consultation conducted by the Canadian Bar Association with individuals living in marginalized conditions, participants testified to the sense of estrangement they feel toward the justice system. The key findings of the consultation were that people feel that legal rights exist only on paper, justice systems cannot be trusted, justice varies from person to person, and that it is difficult to navigate the justice systems.¹⁴

While the list above is essentially comprised of relatively small groupings of individuals, it must be recognized that, when taken together, all of these groups represent a significant portion of the population for whom access to justice may be more difficult. This means that problems of access to justice are not of concern to a mere minority of people.

¹¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls” (3 June 2019) online: NIMMIWG <<https://www.mmiwg-ffada.ca/final-report/>>.

¹² Statistics Canada, *The Daily* (Ottawa: StatsCan, 24 June 2015).

¹³ Statistics Canada, *The Daily* (Ottawa: StatsCan, 12 December 2019).

¹⁴ *Supra* note 7.



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2.2. The Disproportionate Impact of the Pandemic

While the COVID-19 pandemic is sparing no one, the most recent data confirms that individuals from the most marginalized groups, mentioned above, have been disproportionately affected. Marginalized individuals have been most affected in the workforce¹⁵ — in particular, they are more likely to be front-line or essential service workers, which increases their direct exposure to the virus and its consequences, and they are at greater risk of working in the industries worst affected by the pandemic, putting them at a higher risk of losing their jobs.¹⁶ They are also those whose mental health has deteriorated the most since the beginning of the pandemic.¹⁷ Therefore, while they are already facing significant challenges in accessing justice, many marginalized individuals have found themselves in an even more precarious situation as a result of the pandemic: significant financial and employment insecurity (leading to a fear of not being able to meet their financial obligations or an inability to retain legal counsel); loneliness, lack of resources, increased family violence, increased mental health and anxiety problems, including concerns about family members, or fear of becoming victim to discrimination or stigmatization because of their employment or membership in a minority group.

In addition, although justified and necessary, some of the measures taken in response to the pandemic to limit the spread of COVID-19 have had the unfortunate consequence of limiting, to some extent, access to justice for marginalized individuals, including their access to the courts, by insisting on self-isolation and requiring the complete or partial closure of various institutions, including courthouses, and the reduction or temporary suspension of certain court-related services.

The arrival of the pandemic has forced courts to cancel or postpone in-person hearings on issues considered of lower priority — and the criteria chosen to separate these issues from those that are urgent and of priority may have unintended consequences for marginalized individuals. After a period of adjustment, court operations have been able to resume fully, but in a different way: most hearings are now held remotely using technological tools that, unfortunately, are not available to all. While acknowledging the considerable efforts made by court staff to accommodate marginalized individuals who face this new reality of the justice system, the Action Committee believes that further steps should be taken to support these individuals, who may nonetheless experience difficulties in knocking on the doors of justice in the hope of finding a just outcome that they can respect and accept.

Court delays persist and the rules to be followed change as the situation evolves. For self-represented litigants, the closure of courthouses has also made it difficult for them to access legal information and the support needed to fully understand the court process. For their part, individuals struggling with addiction or mental health problems have suffered from the restrictions imposed on the operation of specialized courts (specialized mental health courts, drug treatment courts, etc.) and, by losing this essential part of their support network, they expose themselves to serious risks of relapse. The disproportionate impact of the pandemic is also being felt by lower-income individuals for whom precarious employment or housing has increased legal problems while weakening their ability to deal with them.

¹⁵ Statistics Canada, *A presentation series from Statistics Canada about the economy, environment and society* (Ottawa: StatsCan, 20 September 2020).

¹⁶ *Ibid.*

¹⁷ *Ibid.* For example, 27.8% of visible minorities reported a decrease in the quality of their mental health compared to 22.9% of white people; more than 50% of individuals with long-term disabilities reported that their mental health had worsened since the beginning of the pandemic; 6 out of 10 Indigenous individuals reported that their mental health had deteriorated since confinement; 20% fewer youth aged 15 to 24 years reported excellent or very good mental health as compared to before the pandemic.



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It bears repeating that the impact of the pandemic on the ability of marginalized individuals to access the courts and court-related services will vary as much as the circumstances of these individuals.

3. Promoting Access to Justice for Marginalized Individuals

As stated earlier, problems with respect to access to justice are not new. Nor are they unique to those with circumstances that may make them more vulnerable, even though the consequences of the COVID-19 pandemic with respect to access to justice has been disproportionate among them. For this reason, the Action Committee believes that it would be appropriate to provide some insight that could serve as general guidance to governments or courts in taking steps to promote access to justice for marginalized individuals, including access to the courts and court-related services.

3.1. Principles

Since the beginning of the pandemic, the various actors in the justice system have actively put in place measures to provide an effective system for participants, and since the problems of access to justice preceded the pandemic, **the contemplated pathways to resolution should be sustainable and proportionate to the complexity of the problem they intend to resolve.** They should not be seen as transitional. The task is colossal and efforts have already been dedicated to it, as described further below.

While the Action Committee's efforts since its inception have been aimed at promoting access to justice in general, the Action Committee's publication [*Restoring Court Operations in Northern, Remote and Indigenous Communities*](#) looked specifically at access to the courts and court-related services for certain groups of marginalized individuals, namely those living in these communities. In addition to outlining some of the common challenges faced by these communities - not unlike the aforementioned challenges faced by many marginalized individuals - the Action Committee sets out some principles that should be reflected in actions taken to address these challenges: **(1) the user should be at the centre of the justice system and the contemplated pathways to resolution, and (2) justice is the responsibility of many, all of whom have a role to play.**

These principles should also guide the search for pathways to resolution to the problem of access to justice for marginalized individuals in general.

3.2. Support for Technology

While courts and jurisdictions across the country have taken steps to promote access to justice for marginalized individuals since the beginning of the pandemic, stakeholders in the legal community reminded the Action Committee that technology, while essential, is not a panacea. Human relationships are equally important in providing marginalized individuals with the support they need to ensure real and fair access to justice, to reduce the sense of injustice or malaise they may feel about the justice system, and to give them confidence in the system. It is essential to preserve the human aspect of the justice system.

Technology and support go hand in hand, and participants of the justice system will have different needs. Some will be able to access the technology required on their own, but will need assistance in using it properly or navigating through the various stages of the proceeding, which may be particularly true for self-represented litigants. Others will require support in accessing the technology but not assistance with the legal process, while others will need both.

As indicated in [*Restoring Court Operations in Northern, Remote and Indigenous Communities*](#), the implementation of potential pathways to resolutions to problems with respect to access to justice for



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marginalized individuals could evidently require the mobilization of new resources, which does not mean that it is impossible to take advantage of existing resources or that we should deprive ourselves of the specialized expertise of those who already work in the field with marginalized individuals. Restorative justice programs, legal aid, victim services, and court worker programs, among others, may already have staff, infrastructure and equipment to assist certain groups in need of assistance. Such programs are essential and decisions made in this context should, as much as possible, promote their linkage with the justice system.

3.3. Pathways to Resolution

Many of the recommendations of changes highlighted in [Restoring Court Operations in Northern, Remote and Indigenous Communities](#) can be adapted to other marginalized populations, including the implementation of justice centres (virtual or physical) or the hiring of liaison officers in some communities. The implementation of such resources could offer to marginalized populations tools to alleviate their difficulties in accessing justice and court-related services: single-window services that recognize the close connection between justice issues and a variety of other related factors and that promote the collaboration of a variety of stakeholders in a holistic approach to service delivery. These single-window services could include specialized addiction or mental health services, support during proceedings, information services, and access to the Internet, a telephone line, secure premises or technological tools required for hearings that are now held remotely.

That said, there are many other avenues open to justice system stakeholders who would like to put in place measures, temporary or otherwise, to limit the disproportionate impact of the COVID-19 pandemic on the ability of marginalized individuals to access the courts and court-related services. For example, one of the major challenges at the moment is ensuring the presence in court of self-represented litigants. Many forget that they must attend court and their absence can cause delays for all parties. A designated court staff person could be responsible for reminding these individuals of their court dates, ensuring their attendance and answering their questions.

Guidance could also be provided on case management — before, during and after the hearing — in order to take into account the reality of marginalized individuals and to limit their difficulties in accessing justice.

Moreover, the courts could consider making available to the public a room equipped with technology used for hearings. This facility may be of particular benefit to marginalized individuals. The courts could also provide them with procedural support following a proactive assessment of their specific needs. The data collected through such proactive assessments would, in the medium term, allow for the identification of the specific needs of the population served by the court and allow for better planning of needs and actions to be taken in this regard.

3.4. Data Gaps

On the topic of data, it would prove most useful to collect data more generally in order to paint a clear picture of access to justice for marginalized individuals in Canada. Data gaps could be filled with respect to the accessibility of courts and court-related services and to the experience of marginalized individuals in trying to gain access to justice. It is necessary to learn more about the accessibility of courts and services, whether access is granted physically or through technology, about the broad range of legal and administrative procedures marginalized individuals can encounter across the country, and about the support and special services provided to them in various circumstances, the costs they need to bear for such proceedings to take place as well as the communication and transparency of their case's outcome.



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Of particular interest would be the impact the pandemic has had on these services, specifically to assess what elements still call for additional measures and which measures put in place since the beginning of the pandemic should remain in place once court operations have returned to normal.

Data could be collected to that end from jurisdictions across the country through a national survey or through a Canada-wide study or consultation.

3.5. Conclusion

Finally, it should be remembered that the pathways to resolution mentioned above seek to directly address the problems of access to justice for marginalized individuals with respect to the courts and court-related services, while other measures aimed more generally at empowering marginalized individuals, by addressing inequalities that affect their health, the economy or their education, would also benefit them greatly and, in all likelihood, would improve their ability to access justice at an earlier stage.

In the meantime, the ongoing pandemic reminds us of the urgency and the necessity of addressing the challenges marginalized individuals encounter in the justice system. We all have a role to play to improve access to justice for everyone and we need to take concrete and appropriate actions to ensure that all individuals, including those who are marginalized, feel confident and welcome in the justice system.

4. Access to Justice Efforts for Marginalized Individuals: An Invitation to Share

For compelling reasons, the issue of access to justice has occupied the legal community, academics, many social justice advocates and various civil society organizations for years. There is a wealth of work, literature and initiatives on the issue, and the Action Committee wishes to acknowledge the importance of efforts to date to address the problem, particularly since the beginning of the pandemic.

Given the multifaceted nature of access to justice for marginalized individuals, existing efforts could examine the issue from different perspectives, for different purposes, and for different populations. That said, gathering these efforts at the national level could foster collaboration and exchange of ideas among stakeholders, avoid duplication of work, and be a source of inspiration for all.

Among these efforts are the Action Committee on Access to Justice in Civil and Family Matters, the Access to Justice Research Network, as well as the numerous initiatives undertaken by Access to Justice committees from bar societies across the country and by scholars and civil liberty associations throughout Canada.

Additionally, as the pandemic creates an environment conducive to sustainable solutions to access to justice problems experienced by marginalized individuals, the Action Committee is seeking input from justice stakeholders who have recently initiated or completed work on the issue, particularly with respect to access to the courts and court-related services. These stakeholders are invited to forward relevant information to the Action Committee at the following address: AC-secretariat-CA@fja-cmf.gc.ca.