



# Action Committee on Court Operations in Response to COVID-19

## ORIENTING PRINCIPLES: LEADING AND MANAGING CHANGE IN THE COURTS

### ***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.*

### **CONTEXT**

Change may be the only constant in life, but the justice system has been famously resistant to reform. This is despite the fact that, for decades, all stakeholders in the Canadian justice system have recognized that dramatic changes are necessary to improve access to justice for all. With the advent of the COVID-19 pandemic, though, public health restrictions brought a sudden stop to business as usual and led to unprecedented innovation in the use of technological tools, alternative dispute resolution, and other novel measures in the courts. At the same time, stakeholders across the justice system strengthened existing, and forged new, partnerships to creatively and collaboratively address the challenges they were facing. Now there is broad consensus within 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 21<sup>st</sup> century.

### **THE IMPORTANCE OF CHANGE LEADERSHIP AND MANAGEMENT**

Change leadership involves defining a vision for the future and guiding an organization towards that vision. One of the leading thinkers in this area is Dr. John Kotter, who has developed an eight-step process to leading change that may be of use to court leaders.<sup>1</sup> Change management involves supporting people through a planned change, and making sure they understand the reason for the change, have had appropriate input into it, and possess the required skills and knowledge to successfully operate as it is being implemented. There are a number of popular change management methodologies that could be used by the courts, including the Prosci methodology<sup>2</sup> and the Bridges Transition model.<sup>3</sup> Whichever methodology is adopted, both change leadership and management are crucial as the courts chart a path forward after the recent disruption caused by COVID-19.

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<sup>1</sup> Dr. Kotter's eight steps are: 1. create a sense of urgency; 2. build a guiding coalition; 3. form a strategic vision and initiatives; 4. enlist a volunteer army; 5. enable action by removing barriers; 6. generate short-term wins; 7. sustain acceleration; 8. institute change. See Dr. John Kotter, "The 8-Step Process for Leading Change" online: <https://www.kotterinc.com/8-steps-process-for-leading-change/>.

<sup>2</sup> The Prosci methodology focuses on the people side of change by providing tools for change managers to: prepare their approach, manage the change, and sustain outcomes. See Prosci, "Prosci Methodology" online: <https://www.prosci.com/methodology-overview>.

<sup>3</sup> The Bridges Transition Model focuses on guiding an organization and the people within it as they end what currently is, move through a neutral zone in the midst of the change, and ultimately reach a new beginning. See William Bridges Associates, "Bridges Transition Methodology" online: <https://wmbridges.com/about/what-is-transition/>.

For over a year now, every person who interacts with the courts has been subject to constantly changing practices and procedures. Judges have adapted to new technologies, while often only having remote access to technical support persons. Court staff have seen the nature of their daily tasks change drastically. And litigants and legal professionals have had to adapt to changing processes for every step of their court matters. Because these changes were in response to an emergency, there was usually little or no time to apply change management principles, such as consulting those affected, trying new processes in a limited pilot and adjusting before rolling them out more broadly, or planning the steps to introduce them in a gradual and logical sequence.

The courts are now at a pivotal stage where it is necessary to take stock of all of the changes of the past year and decide which should be maintained permanently, which should be further modified or discontinued, and how to achieve this. At the same time, though, court staff and users are experiencing change fatigue after more than a year of constant adaptation. Integrating change leadership and management principles into further court reform and continuity plans, including those that address case backlogs resulting from pandemic restrictions, can support a successful transition to a “better normal.”

## **CHANGE LEADERSHIP AND MANAGEMENT PRINCIPLES**

The following principles are drawn from various change leadership and management methodologies and are intended to support the judiciary and court administration staff in introducing and sustaining effective change in the pandemic-affected court environment and into the future. Consider applying them within the context of a structured change strategy. For example, first, **prepare** for the change by considering your goals and consulting broadly. Second, **implement** the change at a manageable scale, while ensuring you have created avenues for open feedback and are prepared to adjust based on what you hear. And finally, **reinforce** the change by monitoring progress and supporting individuals as they adapt to new ways of operating.

**Know where you’re going.** For any institution to determine what change is appropriate, it must first know why it exists and what it seeks to achieve. For example, a shift towards people-centred justice places a new emphasis on courts understanding their users and putting their needs at the heart of every system and process.

- Have a clear vision for your court, and measure proposed changes against whether they bring you closer to that vision or not.
- Consider whose input can help inform the development of your vision, and seek it out.

- Look at long-standing practices through the lens of your vision to evaluate whether they meet the needs of the justice system you are trying to create and the people who will use it.

**Build on a solid foundation.** Digitizing overly-complex, inaccessible or ineffective processes will not resolve underlying issues that constrain access to justice and court efficiency.

- Remember that “technology is not the innovation”, and avoid replicating ineffective processes using new technologies.
- Before automating an existing process, think about what it is intended to achieve, and whether all of the steps are necessary to reach that goal. Remove extraneous steps or redesign the process.

**Design with the end-user in mind.** Legal counsel have the experience and specialized knowledge to navigate complex court procedures. However, especially in family and civil disputes, a vast and ever-increasing number of people who come before the courts do so without the support of a lawyer. This means that processes must be accessible to persons without any formal legal knowledge and limited financial and technological resources.

- Think about who will be using the procedure or system, and what constraints they may face.
- Consider the least-advantaged user: rather than designing forms and e-filing systems for legal counsel, for example, consider how self-represented litigants will use them.

**Include staff and other stakeholders in the process.** Court staff, legal professionals, and support workers who assist litigants or witnesses have seen their jobs drastically altered by the changes in court operations since the beginning of the pandemic. They will have a good idea of what changes have worked, and which ones have either complicated their own jobs or added barriers for court users.

- Consult staff and other stakeholders early and frequently. Let them know the intent of the change and how it will benefit them, either directly or indirectly.
- Pay attention to areas of resistance and what they can tell you about how to modify your proposed change initiative.
- Include stakeholders in a risk assessment, to determine what impacts (good and bad) the proposed change could have on people, infrastructure, court processes, health and safety, and the work environment.
- Find ways to engage litigants directly to gain feedback.

- Ensure all affected groups feel heard: seek to incorporate their views, or explain why a different path was ultimately chosen.
- Be prepared to hear feedback that represents both psychological resistance to the change and clear, valid concerns surrounding its feasibility.

**Start small.** The sudden need to adapt in response to the pandemic has largely disrupted the normal cycle of change planning: there was little opportunity to pilot new systems and processes on a smaller scale before rolling them out for broader use. Taking a step back to follow a piloting and gradual scaling methodology can be useful as courts move forward.

- Reintroduce the project management approach of pilot → evaluate → adjust.
- Try new processes on a small scale first. For example, apply a new approach to small dollar-amount claims or in one location before introducing them more broadly.

**Communicate about the change.** If they are going to support change, both staff and court users need to know why it is necessary; what it will entail; and the risks of not changing, as weighed against the benefits of the status quo.

- Develop a communication strategy that both explains what is going to change and clearly articulates the reasons for it. Ensure that everyone knows your vision, and how the changes bring you closer to it.
- Think about the different people to whom you need to communicate the change (staff, legal professionals, court users, the media, etc.), what they need to know, and the best way to reach them. Develop a targeted communication approach for each of the stakeholder groups, as necessary.
- As it rolls out, promote and publicize where your change has been successful.

**Identify and address training needs.** It is likely that judges, staff, and court users will require training before new processes are put in place.

- Consult with each of those groups to understand their concerns and what knowledge or skill gaps they may have.
- Develop training and practice tools to support adoption of the change across the different user groups.
- Test out new systems and technologies before rolling them out.
- Provide initial and ongoing support to ease the transition.
- Consider how self-represented litigants or other marginalized persons can be supported.

**Evaluate and adjust.** Courts introduced a wide range of modernization measures to operate safely under pandemic-related health restrictions. Now that restrictions are gradually lifting, it is time to evaluate those changes before deciding which reforms to keep and which to abandon.

- Take stock of all of the changes that occurred in response to the pandemic. Determine which new measures have worked and which ones haven't, and try to figure out why.
- Collect data to support your findings, where available, and identify data gaps and collection strategies for filling them.
- Consider – and if possible, consult – all users of the justice system when deciding whether a reform “works” or not, and what adjustments might be needed. Pay particular attention to people who face barriers to accessing justice.
- Continue to re-evaluate and adjust the change at regular intervals. New challenges may arise as a small project is scaled up.

## PRINCIPLES PUT INTO PRACTICE IN CANADIAN COURTS

Even in the face of the urgency and uncertainty of the COVID-19 pandemic, courts across Canada took steps to thoughtfully and carefully manage the changes they introduced. Here are some notable examples.

**Federal Court: expanded use of virtual hearings.** When virtual hearings increased in response to the pandemic, the Federal Court provided practice directions to ensure that stakeholders knew that its [Policy on Public and Media Access](#) continued to apply in a virtual setting. The court also adjusted procedures for virtual hearings, such as modifying an initial requirement that they could only proceed by consent when it became apparent that some parties were using the consent requirement as a strategic delaying tactic. While court staff were on board since they had been included in the early stages of planning this change, there was some initial reluctance from legal professionals to embrace virtual hearings. Consultations with the bar and other stakeholders, through existing liaison committees and other means, allowed the court to both take the concerns of stakeholders into account in designing these changes and ensure they were aware of them as they rolled out. More information about this experience is available in the Action Committee’s publication, [Upholding the Open Courts Principle during the COVID-19 Pandemic – a Case Study of the Federal Court](#). This example demonstrates the following principles:

- *Know where you’re going*
- *Evaluate and adjust*
- *Include staff and other stakeholders in the process*
- *Communicate about the change*

**British Columbia: remote bail hearing pilot.** In April 2021, building on pandemic-related experience with virtual hearings, the Provincial Court of British Columbia launched a [pilot project](#) to implement centralized remote bail hearings for individuals from Northern communities. The goal was to reduce unnecessary dislocation of people from their communities by facilitating more timely bail hearings through the use of improved technology that enhanced communication between counsel, their clients and the court. The pilot, which lasted for three months and involved a collaboration with prosecutors, legal aid, the private defence bar, court services branch, the RCMP, and correctional services, was evaluated periodically throughout its implementation. The final report will include a survey of all participants and report out on identified project goals. The Practice Direction that introduced the pilot project clearly articulated its objectives, as well as clear directions on the procedures that would take place during the course of the pilot. Weekly meetings of the steering committee, comprised of the leaders of each of the stakeholder groups, contributed to timely re-evaluation and overall collaboration. This example demonstrates the following principles:

- *Know where you're going*
- *Start small*
- *Include staff and other stakeholders in the process*
- *Evaluate and adjust*

**Western Quebec: stakeholder-informed practice directives.** To address pandemic-related delays, the Superior Court in the Western Quebec region developed local Practice Directives to introduce a range of modified procedures, including enhanced case management, revised joint forms, and improved scheduling practices that sought to use the courts' time and resources more effectively in civil and family matters. To ensure these directives would also respond to the needs of affected parties, these directives were developed in concert with an advisory committee of members of the local civil and family Bars. The directives were modified after legal professionals raised some challenges in implementing specific aspects. Different procedures were put in place for the more populous region of [Gatineau](#) than for the [rural communities](#) that also fall within the jurisdiction of the Regional Coordinating Judge. The court held a virtual training session to introduce the new Practice Directives to members of the legal profession, and invited them to provide ongoing feedback. This example demonstrates the following principles:

- *Design with the end-user in mind*
- *Include staff and other stakeholders in the process*
- *Communicate about the change*
- *Identify and address training needs*

**New Brunswick: simplified jury procedures.** Before the pandemic, Justice Services in New Brunswick was already considering how to simplify and streamline the jury summons and selection process, but the need to address the constraints on jury trials resulting from the COVID-19 crisis accelerated the process. Jury summons were automated, using existing technological tools, and jury summons and certificate forms were both simplified and augmented with Frequently Asked Questions and checklists before they were put online. Despite the urgency of implementing the change, affected stakeholders, including the judiciary, Crown counsel, defence counsel, court administrators, and governmental policy-makers, were consulted in the design process. More information about this initiative is available in the Action Committee's publication, [Streamlining Processes for Jury Summons and Selection – a Case Study of New Brunswick](#). This example demonstrates the following principles:

- *Build on a solid foundation*
- *Design with the end-user in mind*
- *Include staff and other stakeholders in the process*

**Nova Scotia: support for virtual court users.** Many courts across Canada developed tools and processes to support court users in adopting new technology during the pandemic. For example, when the Nova Scotia Supreme Court launched virtual courts in response to the COVID-19 pandemic, it held a [virtual open house](#) for legal professionals to ensure they understood how the process would work. Similar to other courts across Canada, it also developed a guide on [Best Practices for Remote Hearings](#), as a continually available tool for individuals who would be participating in an online hearing. This example demonstrates the following principles:

- *Communicate about the change*
- *Identify and address training needs*