



# Action Committee on Modernizing Court Operations

## MEETING THE DIVERSE NEEDS OF COURT USERS: ORIENTING PRINCIPLES

### A Statement from the Action Committee

*Our Committee supports Canada's courts in their modernization efforts. It provides guidance for addressing challenges, and highlights opportunities and innovative practices to modernize court operations and improve access to justice for court users.*

#### 1. ISSUE AND CONTEXT

Trust and confidence in Canada's justice system is a bedrock of our democracy. However, many court users do not see themselves reflected in the courts of this country; do not feel heard, seen, or understood by the courts; face so many barriers that they do not know how to access justice services that are supposed to be there for their benefit, even when they want to; or don't even turn to the justice system when they should. All persons – including, in no particular order, Indigenous peoples, Black people, racialized persons, persons with disabilities, immigrants and refugees, 2SLGBTQIA+ individuals, persons from linguistic minorities, those who are self-represented, single parents, individuals experiencing addiction or mental health challenges, and individuals who experience poverty or homelessness, to name just a few – are owed the dignity and right to be equally seen and heard within Canadian courts. As society evolves and changes, any failure to achieve this goal undermines the public confidence that is essential for the courts to effectively carry out their role in our democratic order.

Meeting the diverse needs of court users requires both understanding and leveraging the richness and strength of the different perspectives and lived experiences that exist across Canadian communities. Further, acknowledging and addressing the needs of different litigants provides an opportunity to evolve in ways that reduce the overrepresentation of certain populations and facilitate meaningful access to justice, greater confidence in the system, and better and more innovative ways of achieving justice. Given the enduring impacts of the COVID-19 pandemic, along with increasing resistance in some parts of the world to many of the strides that have been made towards equality for under-served groups, it is more important than ever to chart a way forward that acknowledges, makes room for, and responds to the needs of all who seek justice.

The following guidance, along with the companion piece, [Diverse Needs of Court Users: Operating Practices](#), builds on several past Action Committee publications, a full list of which can be found in Annex I. Although primarily focused on responding to the COVID-19 pandemic, these publications contain information, principles, and practices that remain relevant in the post-pandemic context. While starting from these publications, this guidance also takes into account the ripple effects of the pandemic. In addition to drawing on the information in previous pandemic-specific publications, this guidance is informed by consultations and discussions with judges, court administrators, lawyers, and front-line justice actors from across the country. The following principles consolidate the Action Committee's previous guidance; shift its focus beyond the pandemic-specific lens in which it was originally drafted; and provide a broad overview of ways that those working within the courts can build their understanding of court



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users to both better meet the needs of those they serve and innovate in a way that is informed by diverse perspectives.

## 2. JUDICIAL ETHICAL PRINCIPLES

Although the following guidance is offered to all working in the courts, the values espoused in the [Canadian Judicial Council \(CJC\) Ethical Principles](#), which are developed specifically for judges, are reflected throughout this publication. Themes that are particularly pertinent include:

- Treating everyone fairly and with civility and respect
- Being sensitive to social context, which encompasses knowledge and understanding of the realities of the lives of those who appear in court
- Understanding the impact of the law on those it affects
- Ensuring equality and carrying out duties without discrimination or prejudice
- Not being influenced by attitudes based on stereotypes, myth, or prejudice; and making meaningful efforts to recognize and dissociate from such attitudes
- Recognizing judges administer the law on behalf of the community and that unnecessary isolation from the community does not promote wise or just judgments
- Engaging with and learning from the wider public, including communities with which one has little or no life experience.

For more detail, see Annex II for relevant excerpts from each of the five ethical principles.

## 3. ORIENTING PRINCIPLES

The following orienting principles are key to providing fair and accessible justice for all court users.

### 3.1 Adopt a User-Centred Lens

Court modernization works best when its proponents know and understand the court users in their jurisdiction and construct operations and processes to meet their needs. As set out in past Action Committee publications, including [Understanding User-Centred Justice](#), central elements of this principle include:

- Placing the end user at the centre of every system and process in the justice system
- Getting to know the specific communities served by the court and the systemic issues they face
- Ensuring information, processes, and services both respond to the needs of, and can be understood and accessed by, all
- Continuously reviewing existing information and collecting new data about the experiences and needs of court users
- Engaging with users to gain additional information and insights, including approaching local communities as sources of innovation
- Designing processes and services that consider the constraints end users might face, with particular attention paid to the needs of users from marginalized groups as well as the barriers that keep potential users from accessing the system at all.



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New approaches and processes, such as therapeutic or problem-solving courts, Indigenous courts, judicial dispute resolution, and conferencing, are the result of centring court users' needs. These innovations – which are having important impacts at both the individual and systemic levels – challenge adversarial, siloed, and transactional methods of distributing justice and embrace more collaborative, flexible, and holistic ways of working.

## 3.2 Engage in Continuous Learning and Education

Understanding the lived experiences and social and historical context of different court users is a key step towards addressing their different needs and the larger systemic issues that may impede their access to justice. Gaining this understanding, in turn, requires continuous learning and education. By remaining flexible and continuously integrating new information about historical, cultural, social, economic, and other differences, those who design and deliver court processes and services can adapt to meet the changing circumstances and needs of the user population.

When learning about court users' intersecting identities and social context, it is useful to:

### Adopt a learning orientation

- There is no end point to learning: rather, every experience adds to knowledge and is a step along a continuous path.
- Learning requires active engagement and awareness.
- Being self-reflective and honestly identifying knowledge gaps will help guide each person's learning path: not knowing something can be uncomfortable, but everyone has their own lived experiences and must learn from others about areas they have no experience with or expertise in.

### Take a broad approach to learning

- Consider taking a scaffolding approach to education by pairing general cultural competence training with learning about a particular community or population, including regarding:
  - History
  - Substantive law
  - Both commonalities among and variations between localized cultures.
- Additional education and community exposure can create a more fulsome understanding of those who appear before the court: this can be key to dismantling stereotypes or generalizations that might arise from only encountering members of certain communities in the context of criminal charges or other conflicts that have brought them to court.
- Reflecting on and learning about one's own identity and culture is equally important, as it assists in identifying perceptions, assumptions, privileges, and potential biases arising from each individual's lived experience.
- Understanding one's own identity and position within the broader social context can also be an important reference point to better understand different lived experiences.



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## Learn about intersecting dimensions of identity and social context

- Honour both similarities and the rich differences between cultures, traditions, languages, perspectives, and lived experiences.
- Variations in identities and lived experiences exist: it is essential to learn about and recognize those distinctions, acknowledge differences, and understand how diverse experiences impact how people encounter the world and the courts.
- Individuals have many different intersecting aspects of identity and experience: remember there is always diversity amongst individuals within the same group based on other aspects of their identity and experience.
- Learn about and be attentive to both visible and invisible elements of identity.

It can be challenging to engage in social context learning respectfully, in culturally appropriate ways, and within the parameters of each actor's role in the courts. For this reason, institutional leadership is key to successfully implementing social context education.

Judges have many learning opportunities at judicial education conferences and seminars but can also benefit from meeting with communities in their own context. These opportunities allow judges to learn directly from individuals with different lived experiences in a setting that minimizes the power imbalance present when members of the community come into the courts. This way of learning can create greater understanding than can be obtained through written resources or conferences since hearing from first voices, often through storytelling, humanizes those speaking, offers opportunities to relate to community members and their experiences, and presents nuances that can only be understood through experiential learning.

As outlined in the consideration checklist contained in the Action Committee's publication on [Understanding User-Centred Justice](#), under the heading of *Designing and Undertaking Engagement*, processes or protocols for learning from and engaging with local communities can help ensure that engagement is consistent and respectful.

### **3.3 Approach Justice as a Shared Responsibility**

While the judiciary has an important decision-making role in the courts, justice is a shared concern among everyone in society. Acknowledging this fact can enhance modernization efforts in several ways. First, it creates opportunities for courts, justice actors, and community to learn from each other about user experiences and needs at both the individual and systemic levels. Additionally, better processes, services, and outcomes can be developed when siloes are reduced and innovation is based on input from individuals with diverse perspectives, roles, and resources: a range of voices allows a court to form a more complete picture of the experiences of those interacting with the system as well as of the system itself.

Additional benefits and best practices for working collaboratively are outlined in detail in the Action Committee's publication entitled [Multi-Stakeholder Collaboration: Best Practices and Lessons Learned from the Pandemic](#). Some key steps to successfully work collaboratively include:

- Understanding which system and community actors – such as, for example, community support services – should be engaged, and establishing working relationships with them



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- Engaging in dialogue and building trust and rapport within those relationships to foster collaborative, respectful, and non-adversarial problem-solving
- Establishing parameters and working with trusted intermediaries, when necessary, to safeguard judicial independence when engaging with the community
- Increasing the holistic and integrated nature of any initiative by paying attention to the relationships between issues and institutions in addition to those between people
- When appropriate and possible, creating strong dialogue to strengthen the integration and relationships amongst courts, service providers, and other community-based organizations

See the Action Committee's [Case Study: Impact of the Pandemic on the Nova Scotia Wellness Courts](#) for an illustration of many of these elements at work.

### 3.4 Adopt an Orientation of Humility

Remaining humble can support a more complete understanding of the wide range of lived experiences of court users – which can differ significantly from one's own – by fostering a willingness to hear, learn, and explore personal limits and imperfections. Everyone has their own set of values, experiences, and assumptions, and perception is always filtered through this frame. By humbly approaching differences; continually learning about oneself and others; and gaining exposure to diverse communities, lived experiences, and histories, it is possible to reduce conscious and unconscious bias. When those working within the courts consciously and actively strive to understand how their particular background, experience, and history may affect their decision-making, they are able to bolster fair and just treatment and ultimately improve confidence in the courts.

In addition to hearing, learning, and reflecting on personal limits and imperfections, humility in practice can also include:

- Acknowledging the common humanity in us all
- Practicing compassion and patience for self and others
- Embracing empathy by truly seeking to understand a different experience or perspective
- Taking responsibility and learning from mistakes when they occur

### 3.5 Maintain the Human Side of Justice

There is a risk of losing the human side of justice in the increased complexity of legal matters, greater use of technology, and pressure to respond to persistent backlogs and delays.

Increased complexity can cause people to forget about the humans at the centre of an issue and can create a tendency to view individuals and their issues – especially when they are unfamiliar – as difficulties, abstractions, or simply problems to be solved. In addition, while technology can bridge gaps and allow people to come together, it can also create a sense of alienation and disconnection. And finally, the increased pressure backlogs create to deal with matters quickly, and the frustration everyone feels with the delays throughout the system, increases the risk of employing shortcuts, biases, and stereotypes or seeing each case as a number to get through, rather than the story of a real person.

These risks can be minimized if time is taken to intentionally humanize individuals by:



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- Checking one's state of attentiveness, stress, and emotions as well as any assumptions or potential biases that might be present
- Being present with the people in the room (whether physical or virtual) and being actively ready to engage with the experiences of others from a place of empathy and informed impartiality
- Trying, as best as possible, to step into someone else's world, and see things from their perspective
- Listening with connection as a person recounts their story: for judges hearing testimony, this practice helps to see human relationships and complexity while still allowing the separation needed to exercise judgment

At the heart of this approach is honouring and maintaining the dignity of everyone while remaining within the parameters of each individual's role.

## ANNEX I

Relevant past Action Committee publications:

- [Impact of the Pandemic on Interpretation and Translation Needs of Court Users](#)
- [Impact of the Pandemic on Access to Specialized Court Programs](#)
- [Case Study: Impact of the Pandemic on the Nova Scotia Wellness Courts](#)
- [Applying the Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons in a Pandemic](#)
- [Restoring Court Operations in Northern, Remote and Indigenous Communities](#)
- [Impact of the Pandemic on Access to Justice for Marginalized Individuals](#)
- [Multi-Stakeholder Collaboration: Best Practices and Lessons Learned from the Pandemic](#)
- [Virtual Hearings: Operational Considerations – Benefits and Challenges](#)

## ANNEX II

Relevant excerpts from the [CJC's Ethical Principles for Judges](#) (with emphasis added):

1. **Judicial Independence** – Judges firmly reject improper attempts to influence their decision in any matter before the court (Principle I B)
2. **Integrity and Respect** – Judges treat everyone with *civility and respect* in the performance of their judicial duties (Principle II C)

Judges carry out their duties with appropriate consideration for all parties, *whether or not they are represented*, and ensure that they are *treated fairly and respectfully*, so as to provide them with reasonable access to court processes (Principle II D)



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3. **Diligence and Competence** – Judges maintain and enhance their knowledge, skills, *sensitivity to social context*, and the personal qualities necessary to perform their judicial duties (Principle III C)

Commentary included alongside *Principle III C* notes that:

Social context encompasses *knowledge and understanding of the realities of the lives of those who appear in court*. This includes the history, heritage and laws related to Indigenous peoples, as well as matters of gender, race, ethnicity, religion, culture, sexual orientation, gender identity or expression, differing mental or physical abilities, age, and socio-economic background (3.C.4)

The commentary also notes that:

Judges should have and maintain knowledge of the law. Knowledge extends not only to substantive and procedural law but also to an *understanding of the impact of the law on those it affects* (3.C.2)

4. **Equality** – Judges carry out their duties with *respect for all persons*, including parties, counsel, witnesses, court personnel, and judicial colleagues, *without discrimination or prejudice* (Principle IV A)

Judges *refrain from discriminatory behaviour*, they disassociate themselves from and disapprove of offensive and discriminatory comments or conduct by court staff, counsel or any other person involved in judicial proceedings (Principle IV B)

Judges are sensitive to and are *not influenced by attitudes based on stereotypes, myth, or prejudice*. They make meaningful efforts to recognize and dissociate themselves from such attitudes (Principle IV C)

5. **Impartiality** – Judges ensure that their conduct at all times maintains and enhances confidence in their impartiality and that of the judiciary (Principle V A)

Judges avoid conduct which could reasonably cause others to question their impartiality (Principle V B)

Commentary included alongside *Principle V B* notes that:

On one hand, there are likely to be beneficial aspects of the judge being active in appropriate forms of public service. *Judges administer the law on behalf of the community and are appointed to serve the public*. Therefore, *unnecessary isolation from the community does not promote wise or just judgments*. In order to undertake their work with competence and diligence, and in ways that are consistent with judicial duties, judges are encouraged to *take up opportunities to engage with and learn from the wider public*, including *communities with which they have little or no life experience* (5.B.10)

On the other hand, the judge's civic involvement may, in some cases, jeopardize the perception of impartiality. Judges should exercise caution when considering their



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involvement in community activities and be attentive to the limits that judicial appointment places upon their freedom to undertake these activities. Community involvement on the part of the judge should be assessed in light of the form of public service under consideration, the activities and goals of the organization, the role to be played by the judge within it, the risk that the organization may become engaged in litigation and any other relevant factor. (5.B.11)