



A MINISTRY STEEPED IN TRADITION GOES VIRTUAL

Public Service Innovation and Leadership During COVID-19

BY KATE ADACH

DEC. 21, 2020





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This summer, more than 20,000 people—a crowd larger than could fit into Toronto’s Scotiabank Arena—watched an Ontario Superior Court judgement.

Spectators tuned in from anywhere they wanted, via YouTube livestream.

It was a breakthrough for court openness. As high-profile as the case was—a white, off-duty Toronto police officer on trial for attacking and blinding a Black teen—it could have only been viewed by about 50 people in a courtroom, under normal circumstances.

But the definition of “normal” in court services, as with all public services, is shifting.

Since March 2020, Ontario’s Ministry of the Attorney General (MAG) has transitioned its largely paper-based and in-person justice system to predominately online and virtual services—opening new opportunities for public access to court proceedings.

“When you think about that from an open courts perspective, that’s pretty powerful,” says Chris Johns of the more than 20,000 people who were able to view the four-hour ruling from their homes.

Mere months before that, Johns had served as the ministry’s Assistant Deputy Minister of “modernization”—a division that had existed for years, in an attempt to move Ontario’s court services into the digital age. (He’s since moved to a different ministry.)

Only in response to the forced closure of courtrooms, were they finally able to procure Zoom and the infrastructure to support virtual proceedings.

Johns chooses his words carefully: “I don’t know how to say this ... In the most respectful way possible, I think COVID is the best thing to happen to the justice system.”

Digitizing services was always the end goal, he says, but it could never have happened in 2020 if courts had stayed open as per normal.

COURT CLOSURES

Alexey Togunov remembers being called into his boss’s office on March 12, just days before Ontario would declare a state of emergency. The Attorney General’s office knew court closures were imminent.

“We need to pull a team together,” he recalls being told, “to come up with a way of getting courts to run virtually. We need a solution.”

As the ministry’s Director of Project Management, Togunov embraced the challenge. A problem that needed a solution, by way of logistics, was his wheelhouse.

They would need a team, he decided, a group of minds who understood the court system and its technical needs from varying perspectives.

By the next day, he had gathered a “war room” of more than 20 strategists.

“We brought in the folks that know the process, the IT people that know the solutions, the Crowns for the criminal type of cases”

The group involved collaboration from the criminal law division, court services, justice, technology, corrections, legal aid, and regional representatives.

Together they charted every stage of an in-person experience from every possible perspective—the judges, the court staff, corrections—listing how every user who would normally enter a courtroom engages with the system, to then try to translate how each point of the process could be made virtual.

Their process mapping continued into the weekend, and then, remotely, by teleconference, the following week, as lockdowns rolled out across the province.

“It was a week full of adrenaline,” says Togunov.

Ontario’s Superior Court of Justice suspended in-person hearings around March 17, followed by the Court of Appeal and the Court of Justice about a week later.

Courthouses, however, never fully closed, even when courtrooms and in-person hearings did. Court staff remained on site throughout the pandemic, because the courts’ filing systems were predominantly paper-based, so clerks were required to attend—to scan release papers, send documents to various parties, and assist judges who would need to pick up and haul home boxes worth of case files.

That paper-based system, the bane of the modernization division for years leading up to COVID, had to change “on a dime—and I mean like overnight,” says Samantha Poisson, who served as the ministry’s Director of Court Operations at the beginning of the lockdown.

The ministry had to improvise quick solutions—mainly, email-based processes to start. Not the robust filing portals the modernization team had been working toward, but it would have to do, especially for urgent cases.

Court service staff were given generic email addresses, and people were encouraged to identify urgent matters directly to trial coordinators by email. The quick Band-Aid solutions were in lieu of a more sophisticated e-filing system (which would gain progress over the summer), and as an alternative to attending the courthouse in person for administrative matters.

This incremental approach was key.

In the past, modernization efforts had been stymied by the desire for “the ultimate solution,” says Togunov. Before COVID-19, there was hardly an appetite for testing quick-and-easy, or impermanent, transitions. Any change had to be a big, whopping leap forward, rather than what Togunov calls “hops.”

Facing the threat of a justice standstill, MAG couldn’t afford to wait for court hearings to successfully leap from in-person to virtual services in one bound. Instead, they were forced to hop—from in-person, to phone, to teleconference, to a Justice Video Network setup (that already existed for a point-to-point video connection between a courtroom and correctional facility, but was largely inadequate for the scope of need the pandemic presented), and then a significant hop again to the procurement of Zoom for virtual hearings.

Similarly, document sharing hopped from emails, to a OneDrive storage tool, to the procurement of CaseLines, a cloud-based platform for legal departments and courts to share files and collaborate on virtual presentations.

Looking back on the rapid—yet incremental—transition, Togunov says it took a change in mindset to get there.

Often “so many great things” never get implemented, he laments. “They just drag on and on, and the approvals drag on and on.”

The ministry too often seeks perfection, he says. Risk tolerance is typically low.

In this case, his team was empowered to launch a new, untested, approach and “see what happens.” It was that mindset, he says, that allowed them to accelerate.

But, in the early stages of the lockdown, as Togunov’s war room took an inventory of what would be required to begin going virtual, they recognized one thing quite quickly: they “didn’t have enough.” Not enough video capabilities, not enough telephone lines—not enough digital infrastructure or dedicated resources for the volume of appearances they anticipated.

JUSTICE DELAYED IS (VIRTUALLY) JUSTICE DENIED

Ontario has 29 fly-in courts, 54 satellite courts, and 74 base courts consisting of 682 courtrooms.

Across those, the Superior Court processes about 3,500 cases a year including of the province's most serious offences: trafficking, attempted murder, homicide, manslaughter, aggravated sexual assault, and others.

The Court of Justice processes a much higher load—about 250,000 cases a year of nearly every possible charge: probation violations, assault, bail hearings, etc. Many of these are very serious criminal matters requiring urgent attention—child protection and domestic violence cases, as examples.

On any given day, there are thousands of people in custody who have not been found guilty and are awaiting bail hearings. When the court system closed down, those people did not have access to justice, says Poisson.

"That for me was a really serious issue," she says. "Justice delayed is justice denied."

That same motivator drove Shaleena Kitchlu, who'd spent 17 years in the justice sector, and served as the Director of Business Transformation in MAG's modernization division at the onset of COVID-19.

"An added layer of complexity," she says of an already complex justice system, was that people should not be "unduly sitting in custody on bail because we haven't figured out how to keep things moving during a pandemic. [We should not be] denying somebody their right to get an everyday legal matter resolved because we didn't have a backup plan."

The "access to justice" premise was more than a catchphrase, says Kitchlu. It was a sense of personal responsibility to the public, that drove her colleagues to take fast action.

To prevent delays in the first weeks following the provincial lockdowns, Togunov's project strategists began piloting teleconference options. By April, he says, 99% of appearances were being done at a distance, generally by phone.

But even a seemingly simple solution, like getting everyone on a call, had challenges.

His team had to get 600 teleconference lines for across the province, in a week when many other businesses were likely calling Bell and other phone providers, asking for teleconference connections.

Another unanticipated hurdle: phones in corrections facilities are only designed to receive calls, for security reasons. Meanwhile, a teleconference line is also designed to receive calls, not dial out.

On the process side, Togunov's team had to figure out how court staff would perform remotely. What script would they follow? How would they open a courtroom virtually? Normally, a clerk says, "all rise" before a judge enters. How does that play out from home?

Then, there was the hurdle of court recording. They would need to ensure the integrity of the court record. But how do you make sure the matters are recorded clearly? Virtual recording options posed audio issues and echoes, says Togunov.

Once they'd worked out enough teleconference kinks to operate sufficiently, they began reviewing video options.

The ministry's pre-COVID-19 video tool, the JVN, was "really clunky, not user-friendly." It connected courtrooms to correctional facilities, where the accused would appear over video into the courtroom, generally for a first appearance. Everyone else, the legal aid or their counsel, the crown, the charge, judge and clerks, would all be in the courtroom.

Now, Togunov's team had to set up a video system for everyone to be in separate rooms.

"That's where things started to kind of break from a solution perspective," he says.

In April, Attorney General Doug Downey announced the province had leased 600 laptops and equipped them with virtual private networks and digital recording devices.

"We've armed everybody with the tools," he said. "I like to say we've modernized the justice system 25 years in 25 days."

The province also allocated \$1.3 million in funding for technology to help courts and tribunals transition to remote operations.

In May, the ministry launched new working groups dedicated to expediting court proceedings. The aptly named FAST teams—or Fast Action and Support Teams, focused on fast-tracking e-filing, virtual services and video appearances for each of criminal, civil, family and small claims courts.

The original, pre-COVID modernization division was disbanded, just as every division was forced to modernize, or digitize, its processes.

This freed up Johns to move into the role of leading the FAST team assigned to digital hearings and processes for all court types.

They would gather, remotely, "all day, every day, for weeks," figuring out how courts could operate in a remote world, without any physical interaction.

Although the meetings were long, they were more efficient than any meetings pre-COVID, he says, because they ensured only key players could attend.

In the past, governments would tend to “over-invite” to meetings.

“We intentionally didn’t do that,” Johns says. “We told people, ‘you’re going to be unhappy because you’re not going to be allowed into this,’ and we just got the right people in the room to make the decisions ... We got the bureaucracy out of the way of getting the job done.”

With the bureaucracy gone, his FAST team rallied together to uncover gaps, identify needs, and then source the best digital tools.

Not only would all parties need to be able to hear and see each other, but they also needed breakout rooms—for counsel to be able to have private conversations with the accused, for example, and then be able to re-enter the larger “courtroom.”

Zoom, it turned out, could provide that.

They would also need the ability to interactively mark up documents. A lawyer would need to be able to show an exhibit, perhaps a map, for example, and others would need the ability to draw circles or write on the image.

Zoom had an annotation feature, as well.

But could Zoom integrate with the Justice Video Network? Yes, that too.

Zoom has an add-on feature it calls a “room connector” that functions like a universal travel adapter, says Johns. It recognizes the different technologies that could be coming at it—JVN, Skype, Google Meets, Microsoft Teams, etc.—and automatically builds a bridge to that technology.

“In the judiciary, everyone was talking about Zoom,” says Togunov.

The video-conferencing platform satisfied every concern they anticipated. Even security.

After worldwide coverage early in the pandemic of “Zoom-bombing”—the act of uninvited strangers interrupting private meetings—Zoom updated its security and encryption standards.

As well, the moderator of a meeting—or, in this case, a trial—can mute microphones and block cameras of unwanted parties, so that interruptions aren’t possible. They can also remove unwanted attendees or unruly participants—just as a court security officer would in person.

There would be ongoing processes to develop. People could conceivably connect from anywhere and everywhere—their sofa, their dining room table, their bed. Johns says conversations are still being had

around the rules governing what might be happening outside of the view of the camera. The judge should feel satisfied that a witness isn't receiving an undue pressure off-screen.

"This has been a conversation since video started in the justice system way back when the JVN version of video first started. I don't think it's something anybody can completely solve for."

After settling on Zoom, training and deployment was "fast and furious," says Johns.

Meanwhile, the ministry launched another group that would need to be just as fast and furious—a Recovery Secretariat, tasked with re-opening courts safely in accordance with public health regulations—on a tight deadline and under intense conditions.

REOPENING THE COURTS

Poisson agreed to head the new Recovery Secretariat as its Assistant Deputy Attorney General, enticed by the prospect of helping transition an inordinately traditional ministry into modern day systems. And, she says, spurred by an imperative she felt to help reduce the delay of justice.

At the time, however, she may have underestimated the scope of the challenge.

Ontario's three Chief Justices ordered the ministry to reopen courts for in-person proceedings on July 6.

That gave Poisson's team 22 business days to open 44 courthouses and 149 courtrooms. "Twenty-two days," she would emphasize and repeat, even months later. "22!"

"The pressure was unbelievable," she says. "We needed a course of action for which there was no playbook. ...I hardly knew anything about COVID."

She would suddenly have to learn about ventilation systems, methods to measure indoor air quality, and how much fresh air needs to circulate in a room depending on how many people are in the space at one time, to prevent COVID transmission. "Mitigation, hierarchy of controls, HVAC data," she lists. "You know, CO2 is a proxy to fresh air? I knew nothing. All I knew is I had 22 days to get the job done and it was truly unbelievable."

Added duress came in the form of, ironically, a court order.

A group of about 5,000 provincial and federal Crown attorneys, legal aid lawyers and courthouse staff filed a legal injunction against the ministry to delay the reopening of courts because they feared reopening in that timeframe couldn't be done safely.

The judiciary, by its very makeup, tends to be at a heightened risk of harm from COVID. Most justices are, on average, over 60 years old. Of course, the threat went well beyond that.

"People were understandably, incredibly anxious," says Poisson. The scope of the threat "is so personal. It's a world crisis that we're all experiencing at the same time, but it's personal implication, which is that you might be compromising my health and safety, and that of those that I love."

"There's no antidote to that," says Poisson.

All she and her team could do, she says, was follow "the best and most current medical advice and science" available, and then try to "communicate, communicate, communicate."

Poisson would start every meeting by pointing to a daily countdown on the 4' x 5' whiteboard behind her in her home office, Johns recalls: "Seventeen days to go guys. Only 17."

"She's a pretty phenomenal leader," he says. Johns's FAST team worked closely with her secretariat.

But it "wasn't a typical project management approach," she says. "It was a crisis."

Their job was to figure out how to reopen nearly 150 courtrooms safely, and mitigate the distrust by being as transparent as possible.

Team members found themselves in eight to 10 meetings a day, according to Kitchlu, who joined the recovery group at its inception. Meetings continued on weekends.

"While I'm sure many public servants faced similar challenges at the outset of the pandemic," Kitchlu says, "Our folks were working easily 18 to 20 hours a day, seven days a week, for months."

Kitchlu, Poisson, and Vaia Pappas, the court services division's Director of Operational Support, all describe being on conference calls at 3 a.m. or 4 a.m.

Pappas warns that team members' mental health was at risk. Not only were people juggling working from home, often with disoriented kids and the anxieties surrounding a global pandemic, but working in the justice system, she says, brings an added pressure.

"People's lives are in your hands," Pappas says, "There's this real onus ... this real feeling of, 'If I don't get it right, somebody could, for instance, go to jail.'"

"It was crazy," Kitchlu recalls of the pre-opening frenzy.

They would do site and risk assessments for every courthouse, then share updates in virtual town halls to engage all stakeholders—police organizations, bar associations, the judiciary, the Solicitor General’s office, corrections, administrators, ancillary service providers, and the public.

Working closely with a Public Health doctor who served as an advisor to the secretariat, they’d learn what processes and infrastructure they would need from a health and safety perspective. Then they would, again, relay that information to their partners, who would review and add any additional needs.

It was a very reiterative, consultative approach, says Kitchlu.

They installed thousands of pieces of Plexiglass, created a guidebook, an online active screening tool, and a video demonstrating how to navigate the new flow of traffic in courtrooms for physical distancing. They developed mask policies, trained security personnel on COVID-specific screening methods, and distributed thousands of face shields and bottles of hand sanitizer.

Poisson requested the Ministry of Labour’s inspectors do field visits in the days leading up to court openings, and published their reports for transparency.

“You can never over communicate—never,” Poisson emphasizes. “I could have had 100 town halls and it still would not have been overkill.”

With the threat of an injunction hanging over them, “the end of June was sort of a frenzied peak of opposition,” she says.

Tony Loparco, the president of the Ontario Crown Attorneys’ Association told The Globe and Mail in late June that he expected some Crowns with medical vulnerabilities wouldn’t show up in court.

Yet, come July 6, 41 out of 44 courts opened. According to Poisson, not a single person refused to attend.

“It was an amazing day,” she says. “The success astonishes me. I’m so mesmerized that the team has accomplished what we have. Like, truly mesmerized.”

Is court a place or a service?

Today, Ontario’s court services operate using a hybrid approach, as directed by the judiciary.

Some attend in person, with reduced capacity limits per courthouse, to allow for physical distancing. Often counsel, or others, attend virtually. In most cases, those in custody appear by video so as to reduce risks of exposure to other inmates.

"We've been booted into the 21st century," said Justice Leslie Pringle in a recorded webinar back in April. She called the virtual hearings the "silver lining of this crisis."

"Anybody who has ever interacted with the justice system would say it was long overdue, and was taking too long," says Johns.

The ministry had been criticized for years for being stuck in another era, relying on fax machines, or commuting to deliver papers by hand. It was frustrating for most parties—but especially ministry workers on "modernization" teams who had been pushing for court technology to get upgraded years earlier.

Singapore, the UK and Australia have all made gains in virtual court services over recent years. In some cases, they operate primarily in a digital mode, with paper and in-person being the exception.

"Digitizing things is not hard," says Johns. "But change management that surrounds it is what is hardest."

Whether Ontario will pursue more virtual hearings will be up to the courts themselves.

"Everything about how a court runs for the most part, is within the purview of an independent judiciary," says Kitchlu. "And so, it's not about the government rolling something out and the courts being okay with it. It's about working with them very, very closely."

Canada is meant to have an open courts model where anyone can wander into a court event that isn't sealed. Amid lockdowns, that's not possible.

Video could allow more public access to court hearings, should the judiciary decide to hold more livestreams. Ontario could, conceivably, livestream court events on an ongoing basis, as a matter of practice. Perhaps not all viewership would rival a Raptors game audience, but perhaps more would.

"I'd like us to continue on the path that we're on instead of the magnetic pull to go back to how we did business," says Poisson. "It's a better service to the public. You can file a small claims suit in your pajamas on a Sunday, if you feel like it."

In his 2019, pre-pandemic book, *Online Courts and the Future of Justice*, Richard Susskind asks whether courts should be considered a place or a service. He argues that justice can absolutely be served, and at times can be better served, online rather than in courtrooms.

Of course there are philosophical questions like those to be posed, ethical questions to consider, technological kinks to work out, and legislation and processes to re-evaluate.

"You have the right to confront your accuser," says Poisson, recalling the Criminal Code. "I think it says something about 'eye to eye.' What does that mean, right? Does it mean over Zoom? Or does it mean you have to be in the same physical space?"

Those are the legal frameworks that will need to be revisited in light of a new way of providing justice.

"But boy, what a fantastic test tube COVID has provided the judiciary," she says. "If you said to me last year, 'Can you imagine doing an Ontario Court of Appeal exclusively by Zoom?' I would have said, 'No. can't. Can't imagine that, right?' And yet, here we are. ... There's no putting the genie back in the bottle."

