

How the Canadian justice system adapted during the Pandemic

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Introduction:

On March 11th, 2020, the World Health Organization declared a Pandemic owing to the SARS-CoV-2 virus, commonly referred to as COVID-19 (“COVID”).² As a result on March 13th, 2020, the Canadian Government issued a travel advisory to avoid all non-essential travel outside of Canada. Canadians were advised to return home by commercial carrier while they were still available.³ On March 16th, 2020, Canada closed its borders and banned entry to all non-Canadians and non-permanent residents. In a further restriction, on March 20th, 2020 Canada closed its land border with the United States to all non-essential travel.⁴ The Canada-U.S. border at 8,891 km is the longest international land border in the world and it stayed closed for more than one year.⁵

Not surprisingly, the COVID Pandemic had a significant impact on the administration of the Canadian courts. The Canadian system of justice was traditionally system-centric: all of the rules and procedures centred on the best functioning of the

¹ * I am indebted to Darcy Feagan, Articling Student at the Public Prosecution Services of Canada in the Québec Regional Office for her contribution to this article.

² <https://www.cpha.ca/review-canadas-initial-response-COVID-Pandemic>

³ <https://www.canada.ca/en/global-affairs/news/2020/03/government-of-canada-advises-canadians-to-avoid-non-essential-travel-abroad.html>

⁴ <https://pm.gc.ca/en/news/news-releases/2020/03/20/prime-minister-announces-temporary-border-agreement-united-states>

⁵ <https://www.internationalboundarycommission.org/en/the-boundary-and-you/interesting-facts.php#:~:text=The%20International%20Boundary%20Commission%2C%20under,on%20256%20official%20boundary%20maps>; <https://www.cbc.ca/news/canada/us-border-canada-closed-1.6147189>

courts in our criminal justice system and not necessarily on the users such as the accused, lawyers and witnesses.

This all changed with the Pandemic. All of the participants in the Criminal justice system had to adapt and innovate in order for the system to continue to function. All stakeholders also had to grapple with the fear created by the Pandemic, the ever-changing health orders, quarantines and curfews. This paper examines the Canadian court's response to the Pandemic; our own organization's response – Public Prosecution Services of Canada ("PPSC"); challenges faced by the Canadian justice system and legal framework challenges. I will end with an examination of lessons learned to date, the sustainability of the procedural changes brought about by the Pandemic and opportunities created by the Pandemic to do things differently.

The Canadian landscape:

Canada is the second largest country in the world in terms of land mass. Furthermore, Canada is a federation made up of ten provinces and three territories with a central government. Responsibility for the administration of our courts is legally and practically shared among the judiciary, executive and legislative branches of the government.⁶ As a result, each province has its own power in their legislature to make laws within their assigned area as defined in section 92 (4) of our Constitution Act of 1867.⁷ In particular, the province is responsible for Court administration such as the establishment and tenure of provincial offices and a shared Federal and Provincial

⁶ University of Toronto Press Journals. "The COVID Pandemic. Imagining resilient courts: from COVID to the future of Canada's Court System". Volume 48, Issue 1, March 2022. PP 186-208.

⁷ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c 11.

responsibility for health. Consequently, each province and/or territory⁸ came up with their own health response to the Pandemic through a variety of health orders, which were not uniform from one province to the next.

The PPSC is a Federal organization whose mandate covers the entire country as opposed to just one province or territory. The PPSC as a federal employer had to deal and respond to different provincial and/or territorial orders. Accordingly, there was no one PPSC policy that could be devised that would apply to all the provinces and territories as they all involved different jurisdictions. In addition, within the country, some provinces closed their borders to those from other provinces in order to prevent the spread of the virus, which exacerbated the smooth movement of personnel. The PPSC was therefore unable to send employees from one province and/or territory to another to alleviate any shortages in employees in one area without going through a quarantine period. This had the effective of greatly extending the length of time that an employee was away from home. For example, a one-week trial in a different jurisdiction would mean that an employee would be away from their home jurisdiction for three weeks in total, as they would have to satisfy a two-week quarantine period.

The Pandemic also had a significant impact on remote communities in the Northern Territories as these communities had low internet quality and poor connectivity. As a result, remote on line court was a challenge. An additional challenge for the North was the fact that some communities were only accessible by air and because of the Pandemic; many jurisdictions within Canada closed their provincial

⁸ It should be noted that as per the Constitution Act, 1867, the territories do not have the same status as provinces and are under Federal control.

and/or territorial borders to prevent travel and the spread of the virus. Ironically, the isolation of these communities had the positive effect that they remained COVID free for longer periods than the rest of the country. As a result, they did not want court participants from outside the community potentially bringing COVID into the community as COVID could spread rapidly through isolated communities. Thus, the large size of our country and the complexity of our legal system, coupled with competing interests, made it difficult to have a cohesive system.

Court's response to the Pandemic:

The court system was not designed to accommodate regular court hearings remotely. We therefore had to be creative. Initially, the courts responded by routinely adjourning court docket matters for weeks at a time by phone using the existing mechanism in place for telephone remands when the police could not bring the accused persons to court. The courts then turned to remote court appearances by using, new to the courts, technology such as Zoom, Skype and Ms Teams. These mechanisms had the double effect of preserving the courts jurisdiction over the accused while cutting down on exposure to the COVID virus, as it was not necessary for the accused to attend court.

Universally, all provincial and territorial jurisdictions in Canada settled on video conferencing and remote appearances as a solution to facilitate the continued operation of the court during the Pandemic while adhering to the provisions of the Criminal Code. What was not universal was the platform used by each jurisdiction. For example, the province of Nova Scotia at the outset of the Pandemic used Skype as their remote

platform. Nova Scotia subsequently changed to Ms Teams, as the Skype platform was not viewed as sophisticated enough to handle remote hearings. Again, the PPSC which had prosecutors in all provinces and territories, had to follow suit and develop additional training for their Prosecutors so that they could use this new software. On the other hand, the province of Ontario used the Zoom platform for the hearing of their cases, which necessitated additional but different training. As the platforms used across the entire country were not uniform and the needs and requirements of the court were quickly changing, the PPSC had to constantly update and invest in technology depending on the work location of their employees. The PPSC staff also had to be nimble and adapt to the moving landscape and learn the new software. Learning to use new software was easier for some staff as opposed to others depending on their technological aptitude, meaning that some staff had to invest significantly more time in prepping for their hearings.

PPSC's response to the Pandemic:

In order to protect its staff, the PPSC mandated that all staff should work from home except where it was absolutely necessary to attend the offices. In those limited circumstances, measures were introduced to limit the number of attendees in the office at the same time and all employees had to wear masks in the offices and to socially distance. Plexiglas, arrows creating one-way hallways and other measures were introduced to limit the interaction of employees and reduce the spread of the virus and to keep employees safe. Money was invested in supporting employees to create a work

from home environment with home office equipment. In short, working from home became the norm and at present still is the norm.

Additionally, on August 13th, 2021,⁹ the Federal Government introduced a mandatory vaccination policy for all of its federal public service employees with exemptions for religious and/or health reasons. The impact of this policy was significant in that for a staff of 1,200 employees, 99% of them were vaccinated and the remaining 1% were composed for the most part of staff who either applied for and received accommodation or decided to resign or go on leave without pay. This policy was subsequently suspended on June 20th, 2022.

In further response to the Pandemic, PPSC collaborated with a number of stakeholders such as the bargaining agents and national committees to develop the PPSC Business Resumption Plan (“Plan”). This Plan gave each province and/or territory the flexibility to develop their own back to work procedure depending on the COVID levels in their region.

Finally, each prosecution office in all of the provinces and territories began the work of triaging their cases in order to address the backlog. Cases that had a low public interest component and/or were not serious were resolved quickly. The goal being that the serious and complex cases would take precedence and proceed to trial.

Challenges faced by the Canadian justice system and its participants:

This greater reliance on technology came with its own challenges. The office Information Technology system had to accommodate increased traffic especially as all

⁹ Policy on COVID vaccination for the Core Public Administration including the Royal Canadian Mounted Police as modified on October 6th, 2021.

of the meetings were now remote. Bandwidth had to be re-examined and the Wi-Fi had to be reliable. As many people were working from home, they were now more dependent on their individual service provider for Wi-Fi, which also caused issues as this new additional burden on the system led to technological glitches and increased employee frustration.

The Pandemic caused high levels of fear and anxiety among the staff. The backlog of cases, paired with long periods in quarantine and isolation, increased the mental health toll of the PPSC employees and contributed greatly to the challenges faced. This fear increased as news filtered throughout the office about the overburdened health care system and the rising number of deaths that also included a PPSC staff member. Employees in well-populated areas in Canada such as Toronto were bound by quarantine rules preventing individuals from leaving their home. Toronto earned the reputation world wide of having the longest lockdown in the world, just over 360 days.¹⁰

Many staff members expressed great reluctance to go to court and the PPSC as an employer had a moral and statutory obligation towards the health and safety of the employees to ensure that their working environment was safe. All of these work stresses competed with obligations at home for PPSC employees, some of whom had to contend with children attending school remotely. The blur between office and home, between work and personal time added to the employees' stress levels.

¹⁰ BBC News, "Toronto lockdown – one of the world's longest?" by Robin Levinson-King may 24, 2021.

Legal Framework challenges:

The Pandemic also affected our legal framework. The solution finally arrived at by the court in the form of remote video appearances, was not easily supported by the Pre-Pandemic legal framework. For instance, section 715.21 of our *Criminal Code*¹¹ is a default provision that provides that except as otherwise provided in the *Criminal Code*, a person who appears at, participates in, or presides at a proceeding shall do so personally. It is arguable that this provision also allows for remote appearances however, that is not the universal interpretation by the justice participants and remote appearances are not otherwise provided for in the *Criminal Code*.

In an effort to modernize the criminal justice system, the Canadian government made amendments to the Criminal Code to clarify and standardize remote appearances for Accused persons when the Prosecutor and the Defence consent.¹² For example, a proposed amendment to the same section 715.21 of our *Criminal Code* suggested that except as otherwise provided for in this Act, a person who appears at, participates in or presides at a proceeding shall do so in person as opposed to personally. In a similar vein, section 715.234(1) was added to give discretion to the court, to allow an accused to appear by audioconference or videoconference for the purpose of making a plea with the consent of the Prosecutor and the accused, which was not previously the case. In other words, the proposed Criminal Code amendment now provided for remote appearances.

¹¹ Criminal Code. R.S.C. 1985 c. C-46 as amended.

¹² Bill C-23, An Act to amend the Criminal Code and the Identification of the Criminals Act and to make related amendments to other Acts (COVID response and other measures). First Reading February 24th, 2021.

Unfortunately, an election was called in Canada before the proposed amendment became law, which resulted in the Bill dying on the order paper. The Canadian Senate has since introduced its own amendment to the Criminal Code which is essentially similar in substance and provides for the availability of remote appearances by audioconference and videoconference in certain circumstances and allows for the use of electronic or other automated means for the purposes of the jury selection process to name a few.¹³ It was passed by the Senate in June of 2022. Once this Bill goes through the legislative stages at the House of Commons it will become law. These legislative amendments are sorely needed as they will streamline the remote hearing process and provide uniform guidance to the legal community.

An additional challenge has arisen owing to the backlog of cases and ensuing delays. Many cases are vulnerable to being stayed by our Canadian courts due to the combination of section 11(b) of the *Canadian Charter of Rights and Freedoms* (“Charter”),¹⁴ which protects the right to be tried within a reasonable time, and the Supreme Court of Canada decision in *R. v. Jordan*.¹⁵ The *Jordan* decision provided a framework for assessing cases under section 11(b) of our Charter. As a result of this framework, there is a presumptive ceiling from the time that the Accused is charged to the actual or anticipated end of trial.¹⁶ Any delay beyond this presumptive ceiling is deemed to be unreasonable, unless exceptional circumstances justify the delay, which

¹³ Bill S-4. An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID response and other measures). First reading February 8, 2022.

¹⁴ Part I of the Constitution Act, 1982. Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11[hereinafter “Charter”] Subsection 11(b) of the Charter provides that “any person charged with an offence has the right: (b) to be tried within a reasonable time.

¹⁵ *R. v. Jordan* [2016] 1 SCR 631.

¹⁶ The presumptive ceiling is 18 months for cases in our Provincial courts and 30 months for cases tried in our Superior Courts.

the Prosecutor must prove. The Pandemic is of course an exceptional circumstance but it is time limited. The expectation will still be that the Prosecutor exercises due diligence in getting the case to court on a timely basis as the Prosecutor cannot continue to rely on the Pandemic as being an exceptional circumstance.

Another unsettled area is the extent to which judges should consider the dangers posed by COVID in prisons when making their detention and sentencing decisions, if at all. There is general acknowledgement that COVID poses a health risk for people incarcerated in Canada's prisons and jails due to the realities of communal living, and the fact that lockdowns can affect the prisoners' quality of life.¹⁷ The court system and processes for detention hearings, sentencing, and parole decisions have responded in a number of ways to this novel challenge. Such changes, especially at the beginning of the Pandemic, resulted in a remarkable 15% decline in the number of incarcerated persons across provincial, territorial and federal facilities, however that number has been modestly increasing ever since that time.¹⁸

Judicial Interpretation - Pre-Trial Detention

With the onslaught of the COVID Pandemic, Canadian courts, as part of their bail hearing considerations, took judicial notice of the risks posed by the virus in detention centers. If the accused wished to rely on a specific risk, they had to do so with concrete evidence. For example, if an accused wished to show that they faced an elevated risk

¹⁷ See for example *R. c. Gagnon*, [2021 QCCQ 3073](https://www150.statcan.gc.ca/n1/daily-quotidien/210310/dq210310a-eng.htm) at paragraph 101; Rudnicki, C., "Confronting The Experience Of Imprisonment In Sentencing: Lessons From the COVID Jurisprudence", *The Canadian Bar Review* Vol. 99, No. 3 (2021), at page 476, <https://cbr.cba.org/index.php/cbr/article/view/4708/4511>

¹⁸ Statistics Canada, "Changes in federal, provincial and territorial custodial populations during the COVID Pandemic, July to September 2020," <https://www150.statcan.gc.ca/n1/daily-quotidien/210310/dq210310a-eng.htm>

related to COVID, they would have to adduce evidence of their specific health needs and concerns, and/or the institution's (in)ability to mitigate those risks.¹⁹ Without such specific evidence, the courts are still able to consider the broader dangers of COVID in detention facilities, but not in an inmate-specific way.

Not all judges were open to COVID-related arguments, or have given them significant weight. As Justice Brown at the British Columbia Provincial Court wrote in *R v Anderson*, "the coronavirus is not a get out of jail free card."²⁰ The Pandemic is only one among many other factors considered during a bail or sentencing hearing.

Judicial Interpretation - sentencing

Prison conditions are sometimes called the "black box" in the law of sentencing, as courts place more focus on the length of the sentence than how it will be experienced.²¹ COVID has forced judges to consider the effects that certain prison conditions will have on each specific offender, thus individualizing the proportionality analysis, and sometimes resulting in a reduction of sentence.

If the "collateral consequence" of being incarcerated during the time of COVID would make an otherwise fit sentence much harsher and more punitive, judges can render lighter sentences, in order to satisfy the principle of proportionality. In some cases, they have done this by reducing the duration of the sentence. For example in *R v Bieber*²², no relation to Justin Bieber, the judge reduced the offender's sentence by

¹⁹ See *R. v. Myles* [2020 BCCA 105](#) at para 40; *R. v. Kadoura*, [2020 QCCQ 1455](#) at para 82.

²⁰ *R. v. Anderson*, [2020 BCPC 70](#) at para 35.

²¹ Rudnicki, C., "Confronting The Experience Of Imprisonment In Sentencing: Lessons From the COVID Jurisprudence", *The Canadian Bar Review* Vol. 99, No. 3 (2021), <https://cbr.cba.org/index.php/cbr/article/view/4708/4511>

²² *R. v. Bieber*, [2022 ONCJ 53](#) at para 82.

three months due to the collateral consequence of lockdowns and isolation in prison, even for relatively serious charges of impaired driving and possession of a weapon in a public place, and with no evidence of specific health vulnerabilities of the accused.

In other cases, judges have granted conditional or suspended sentences to be served in the community, as a way of addressing the dangers of COVID in prisons for particularly vulnerable persons.²³

Other judges have considered the harsher conditions at remand facilities as a factor that justifies a sentence of time served. In such cases, they have determined that the pre-sentence custody during the Pandemic was sufficient to reduce the sentence yet to be served.²⁴ Some judges have even altered the pre-sentence custody credit formula. Normally, each day in pre-sentence custody counts as a day and a half (1:1.5) of the eventual sentence. In the Ontario case of *R v. Robertson* however, the judge credited the accused custody on a 2:1 basis, due to the harshness of the lockdowns at the detention center and the 17 days of preventative isolation that he experienced.²⁵

However, this type of sentencing leniency is not universal across the country. In *R c Baptiste* for example, a case from Quebec, Justice Galiatsatos wrote that prison conditions are more properly considered by parole boards than sentencing judges.²⁶ Without any evidence that the offender suffered specific health issues that would exacerbate the risk posed by COVID, Justice Galiatsatos declined to reduce the

²³ *R v Stevens*, [2020 ONCJ 616](#) at para 61; see also *R. v. Chadha*, [2021 ONSC 495](#) at paras 22-25.

²⁴ See for example *R v Pangon*, [2020 NUCJ 30](#) at paras 78 to 131; *R. v. Hearn*, [2020 ONSC 2365](#) at paras 15-25.

²⁵ *R. v. Robertson*, [2020 ONCJ 595](#) at paras 39-54.

²⁶ *R v Baptiste*, [2020 QCCQ 1813](#) at paras 240-250.

sentence on Pandemic-related grounds.²⁷ Many other judges have come to the same conclusion.²⁸

This new factor in sentencing decisions has added to the role of the Prosecutor. Prosecutors now have to consider the rates of COVID in specific jails and prisons, the steps that the institutions are taking to mitigate those risks, and how each specific prisoner has been affected, in anticipation that this may affect the judge's sentencing decision.²⁹

Judicial Interpretation – Preference for in-person hearings.

At present, as the amendments to the Criminal Code discussed previously are not yet law, the decision of whether a trial will proceed virtually is at the discretion of each individual judge. Consequently, there have been differing approaches across the country and it does not appear that all judicial participants have embraced remote hearings.

In *R v Munro*³⁰, a 2022 British Columbia case concerning breaches of the *Fisheries Act*, the judge rejected a request that the defendants, their counsel, and witness appear via videoconference. The defence had highlighted that they all lived in different cities around the province, and the estimated transportation costs to attend the courthouse were over \$5000. Defence counsel also raised his own personal concerns related to COVID, and stated that the accused may risk having to self-represent if the case proceeded in person. Importantly, the Prosecutor did not contest the defence

²⁷ Note: this sentence was successfully appealed, but not on the COVID issue. See *Baptiste c. R.*, [2021 QCCA 1064](#).

²⁸ See for example *R. c. B.F.*, [2022 QCCQ 1719](#) at paras 82-86; *R. c. Singh*, [2021 QCCS 830](#) at para 94; *R. c. Guay*, [2020 QCCQ 8135](#) at paras 78-111; *R. c. Reyes*, [2020 QCCQ 7784](#) at para 78.

²⁹ See, for example, *R. c. Gagnon*, [2021 QCCQ 3073](#) at paras 57, 67; also supported by anecdotal information from prosecutors at the PPSC Montreal office.

³⁰ *R. v. Munro* [2022 BCPC 48](#).

counsel's request for a remote hearing. The judge considered, among other things, the technological difficulties of conducting hearings by Ms Teams, the need for a fair trial, and the necessity of assessing the credibility of witnesses and rejected the request. As the legislative amendments with respect to remote hearings are not yet law, there is no standardized procedure and no uniform process being presently used in the courts.

Lessons learned to date – continued challenges with remote hearings:

The fact that cases can now be heard remotely, if allowed by the judge, have also created their own challenges. For instance, how do we ensure the integrity of our processes? Two recent cases illustrate the point. In the *Jassem* decision,³¹ a case that proceeded virtually over Zoom, Justice Kenkle was faced with an application from the Prosecutor for an order permitting two undercover police officers who were testifying remotely to do so wearing a COVID style partial facemask. Two of the defence counsel opposed this Application. In allowing the Prosecutor's application, Justice Kenkle found *inter alia*, that it was necessary to allow the police officers to testify with their masks, as there was a real risk that their identities could be exposed and disseminated on the internet:

“...DS Torres explained that there are websites that are set up to expose the identify of undercover officers and those sites have disseminated such information about UC [undercover] officers in the Toronto region including photographs. He gave an example of a recent RCMP [Royal Canadian Mounted Police] investigation where a suspect's query of such a website exposed an actual UC operator. (Additions mine)”³²

³¹ H.M.Q v. Salloum Jassem et al 2021 ONCJ 75 (Kenkle, J)

³² Ibid at p.4, para. 12.

Justice Kenkle went on to note that the present provisions of our *Criminal Code* or the *Courts of Justice Act* “do not provide sufficient protection for the safety of these specific witnesses in the context of a virtual Zoom hearing”³³

In the case of *Attayee*³⁴, a domestic assault case that proceeded virtually over Zoom, the Judge was faced with what he described as “a very disturbing turn of events”.³⁵ During the testimony of one of the police officer witnesses, a number of pings could be heard suggesting the notification of a message being received.

Simultaneously with the pings, both the witness and the officer in charge bowed their heads in what the Judge described as suppressed laughter. The same behaviour was observed with a subsequent ping. The behaviour of the two officers suggested to the Court that they were in fact communicating with each other while one of the officers was actually testifying. The judge in condemning, in no uncertain terms, this behaviour stated:

“Further, it undermined the administration of justice because it left the impression that the trial was not fair. How could a defendant, in an open court, whose liberty is at stake and who faces significant consequences if found guilty, feel as though he’s had a fair trial if the witness and the officer in charge are communicating surreptitiously while testifying?”³⁶

These cases demonstrate that virtual hearings come with their own challenges.

In an additional challenge to remote hearings, the courts have decried what they view as a reduction in decorum. That is, people attending court from their cars, local coffee shops and the like. The courts have begun to grapple with some of these

³³ *Supra*, note 7 at p. 4, para. 12.

³⁴ *H.M.Q. v. Islamunddin Attayee*. Unreported. January 27, 2022. (Chamberlain, J)

³⁵ *Ibid* at p.5, para. 22.

³⁶ *Supra*, note 10 at p.7, para. 34.

matters by issuing Directives to Zoom participants. In the Ontario Court of Justice, Remote Court Appearances Guide for Participants for instance, participants are reminded to conduct themselves as if they were physically in the courtroom and further advised to dress appropriately and not to eat or drink anything except water, nor to smoke or vape.³⁷ These guidelines unfortunately became necessary because of cases before the courts.

Sustainability of procedural changes brought about by the Pandemic:

It appears unlikely that we will return to the way we were before the Pandemic. Hybrid courts, which allow for various platforms, such as Zoom and/or Ms Teams are more accessible to persons with disabilities in particular and reduces generally the expenses of all parties in travelling to court. The Canadian Criminal Code is in the midst of being amended to allow greater flexibility for remote hearings. Experts can testify from wherever they are located and do not have to be flown in at great cost. It is much easier for an accused and their lawyer to attend a ten-minute zoom appearance at set date court rather than spending the better part of a day getting to court and waiting for their matter to be called.

Furthermore, it is cost efficient for an in custody participant to appear by video than to have the police transport the individual to court which takes time, money and increases security risks.

³⁷ Ontario Court of Justice. "Remote Court Appearances Guide for Participants.". See also: <https://www.ontariocourts.ca/ocj/COVID/remote-hearing-guides/guidelines-re-remote-hearings-in-the-ontario-court-of-justice/>

It is debatable whether these changes have universally increased access to justice and modernized our court systems: virtual trials have tended to exclude the public and the media. On the other hand, tools developed by the courts, such as the electronic filing of pleadings and documents, appear to be here to stay and have modernized our courts. Ironically, in some regions such as Nunavut in northern Canada which was COVID free for much of 2020 and early 2021, the courts were slow to shift to remote hearings or the greater use of technology as elsewhere in the country as they did not have to address this issue as early. Furthermore, technological barriers such as lack of bandwidth and access to technology in remote areas also impeded any quick transition to technology. As is clear, not every jurisdiction in Canada progressed at the same rate.

Although there continues to be a place for in-person hearings generally, and depending on the region, not all trials lend themselves to remote hearings. Cases involving juries, undercover officers, terrorism or matters of high security will continue to most likely be held in person. The risk of a security breach greatly outweighs any perceived benefit.

The PPSC has continued to modernize the workplace and their prosecutorial policies and practices. As many of the hearings are still remote, further investment in digital literacy and technology is on the horizon. There has been a move away from paper disclosure and the offices have become more digitized. As many employees are now used to working from home, remote work is now acceptable and being viewed as the norm. All employers if they wish to remain an employer of choice will have to grapple with this new reality and expectation of hybrid work.

Opportunities to do things differently:

We are not at that point yet in Canada where judges of different provinces or territories can share the courtroom to resolve an inter-jurisdictional matter but this is no longer impossible, as it seemed, say two years ago. The Pandemic has taught us that we do not always have to be in reactive mode but can think creatively and productively of ways to continue to improve our criminal justice system especially where there is continued good communication and collaboration among the stakeholders.

In terms of the workplace, we can also look at working differently remotely. For instance, the issue of hybrid work is being studied and evaluated at the PPSC in order to develop a Hybrid Workplace Plan. This will ensure continued flexibility across the country for all employees and is a recognition of a new way of doing business.

In looking at society as a whole, the ongoing COVID Pandemic inverted the hierarchy and shifted to a more user-centric approach. This is a great boon to access to justice as persons with disabilities and immune-compromised persons can safely attend court. Routine appearances, such as set date court, can be removed from in person attendances in the courtroom and leave the courtrooms for matters that must proceed in person.

Conclusion:

We have been provided with a once in a lifetime opportunity to revamp our legal system and the way in which we work as a result of the Pandemic. Most of the recent technological developments in the courtroom have been made thanks to the Pandemic. Necessity truly is the mother of invention!