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THE THREE CHIEFS: INTERVIEWS WITH THE THREE CHIEF JUSTICES OF ONTARIO ON THE COURTS' RESPONSE TO COVID-19 AND THE MODERNIZATION OF THE JUSTICE SYSTEM

January 12, 2021

Chief Justice George R. Strathy, Court of Appeal for Ontario; Chief Justice Geoffrey B. Morawetz, Ontario Superior Court of Justice; Chief Justice Lise Maisonneuve, Ontario Court of Justice; and David Milosevic



As we start the new year with hope for an emergence from COVID-19 in 2021, we are witnessing rapid changes to the justice system.

The challenges posed to our justice system by the pandemic, and the courts' response to those challenges, have been a central feature of our lives this past year and will continue into 2021.

But as we look ahead, we see that long-delayed reforms are now underway, with the support of the Chief Justices of the Ontario Court of Justice, the Ontario Superior Court of Justice and the Court of Appeal for Ontario.

At the end of 2020, I interviewed Chief Justice Lise Maisonneuve of the Ontario Court of Justice, Chief Justice Geoffrey B. Morawetz of the Ontario Superior Court of Justice and Chief Justice George R. Strathy of the Court of Appeal for Ontario.

The Chief Justices looked back to the early days of the pandemic and described how quickly the challenge of the COVID-19 crisis descended on our institutions, and recounted the urgent response required by the courts in the initial stages of the pandemic.

In our interviews, the Chief Justices provide updates on current court operations and challenges the courts are currently facing.

Then we look ahead and discuss the future of the justice system in Ontario. Our profession is changing. Court modernization spurred by the pandemic offers real benefits in efficiency, reduced costs and, it is hoped, greater access to justice. But as with all changes, there are risks as well as benefits. The Chief Justices discuss the risk of change, and how to ensure that change benefits all Ontarians, not just those with access to the technology that will define our system going forward.

By way of brief introduction, **Chief Justice Maisonneuve** was appointed Chief Justice of the Ontario Court of Justice in April 2015. Chief Justice Maisonneuve heads Canada's largest Court, which hears over 200,000 criminal cases (almost 480,000 criminal charges), millions of provincial offences such as traffic tickets, and serves over 20,000 families in crisis annually. The Court sits in over 150 locations throughout the province. Prior to her appointment as Chief Justice, Her Honour was associate Chief Justice since 2013, and a judge of the Court from 2001-2013.

Chief Justice Morawetz was appointed to the Ontario Superior Court of Justice in 2005. The Superior Court is the busiest superior court in Canada, with nearly 200,000 new matters commenced in the Superior Court each year. His Honour served as the court's team leader of the Commercial List from 2010 to 2013, when he was appointed Regional Senior Justice for the Toronto region. In this role, he heard civil, commercial and Divisional Court matters. He was appointed Chief Justice of the Court on July 1, 2019.

Chief Justice Strathy was appointed to the Court of Appeal for Ontario on April 25, 2013, and was subsequently appointed as Chief Justice of Ontario and President of the Court of Appeal for Ontario on June 13, 2014. The Court of Appeal for Ontario hears some 1000 appeals and over 1000 motions each year.

From 2007-2013, Chief Justice Strathy served as a judge of the Superior Court of Justice in the Toronto Region, where he presided over civil, class action and criminal matters.

David Milosevic:

Can you tell me when you first recognized that COVID might pose a significant threat to normal court operations?

Chief Justice Maisonneuve (OCJ):

I think you can imagine when COVID hit, it was quite a shock to the system. For our world and courts, it was probably like everyone else, mid-February to the end of February. And then right in the beginning of March, within six days, everything had to come almost to a halt in the system.

So it came quickly, like the rest of society, I think. Everyone was quite shocked how quickly the virus could spread, and the impact that could have on our society. And more specifically for me, on the courts.

Chief Justice Morawetz (ONSC):

I would liken it to a snowball coming down the hill. It started off quite slowly, and I think it was around January when we heard the first report of a positive case in Canada. It was in Toronto - an individual who I recollect had been traveling overseas. But by that point, given that it was starting to get into the press each day, we did get in touch with the Ministry of the Attorney General to review whatever plans they had in the event of community transmission. We also had a meeting with the Ministry officials in mid-February. I think it is fair to say that both my Executive Legal Officer, Mohan Sharma, and I were concerned about the sufficiency of the Ministry's plan. It's always great to look at these things with the benefit of hindsight, but I think right across society generally, there was a lack of appreciation as to how serious this issue would become.

Chief Justice Strathy (ONCA):

It came on very suddenly. I distinctly remember flying back from Ottawa on the evening of the 12th of March. By the time I woke up on Friday, the 13th of March, it was pretty clear that we were going to have to take immediate steps to address the pandemic. On the following Monday we canceled all hearings scheduled for that day. On the Tuesday, Ontario declared a state of emergency. We immediately cancelled hearings for the balance of the week, and then essentially for the balance of the month of March. Ultimately, we didn't hear any matters other than urgent matters, until about the end of April.

David Milosevic:

What were the first measures the court undertook to respond to the pandemic?

Chief Justice Maisonneuve (OCJ):

It quickly became apparent to us that the one thing we had to do was reduce the amount of traffic in the buildings themselves. So we had to reduce the amount of people coming in. From my perspective, the first thing we did is we looked at our busiest court. Which courts attract most people? Well, of course, in the criminal those are remand courts, are plea courts. And then to a lesser extent, the trials and the preliminary hearings. And of course the same with family. The case management court for family, the emergency motions for family.

So right away those courts, we tried our best to make them virtual. And in some instance, we could not set up the virtual appearance fast enough, so we automatically developed directives to have automatic adjournments. So if you were to appear in a certain court for your case management court in criminal, you were automatically adjourned for 10 weeks, let's say, at the beginning, without the need of appearing, so that we would stop people from appearing. And at the same time, however, we realized that there's some courts that needed to continue at the beginning, and still do now, which was the bail court, for example.

People who are arrested overnight and have a right to their bail hearings, we just couldn't stop that operation. So we immediately tried to do everything we could remotely. And that was quite a challenge, because unfortunately, the courts and the jails are not equipped with the proper infrastructure to have a call like you and I are having now. That was not in place, we were not doing that before COVID. So we had to quickly react to make sure that those people were served, and that there was still access to justice, even though we were in a pandemic.

We did our best, but yes, some were delayed, especially in our larger centers. And we even went to doing bail hearings by phone, which is not the optimal conditions to have for a bail hearing. A bail hearing is a very important part of the process. We have to remember that people are presumed innocent, and they haven't been found guilty yet. And the bail hearing needs to be accommodated.

So we did our best to do everything we could. We did many by phone until we could get the infrastructure to be able to use more of our video capacity. We did have some capacity in before, but we never counted on the volume to have to deal with all of the bail hearings. Because before COVID, of course, we were bringing people into the building, and we were just doing our remands by video, not actually running a full bail hearing, which sometimes could last two to three hours in any court. So if you look at Ontario as a whole, and you start having everyone appearing by video, the system couldn't handle it. We didn't have the infrastructure.

And then at first we continued to do our trials in person, both in and out of custody trials at first, but shortly, shortly after, I can't remember the exact date, but I think it would have been mid-March, we decided to stop all of our out-of-custody trials and prelims, and those were automatically adjourned. And then we had to stop even our in-custody trials because the virus was moving so quickly and the numbers were increasing, so that decision was made.

So that was the first process until July the sixth, where we started to increase our operation, always, always encouraging as much virtual as possible. And by July the sixth, we had much more in place where we had access to Zoom lines, we had access to other systems that we hadn't put in place. So between March and July the sixth, that's when all those infrastructures were put in.

Chief Justice Morawetz (ONSC):

In the beginning of March, we were operating in largely a paper-based system, the way we had when the Court was first established. Both Mohan [Mohan Sharma, Executive Legal Officer in the Office of the Chief Justice] and I recognized at that time if we had a significant shutdown, as far as systems are concerned, we were really unprepared. By February, more positive cases were reported in Canada, and by the first week of March, our paper-based system posed a big problem. The global pandemic was declared on March the 11th. I still recall that day, watching an NBA basketball game, and hearing that the season was being canceled. And I said, "Okay, this is really something that is now significant." It's interesting how sports had that type of an impact, but that was March 11. By the Friday, you started hearing a lot of international conferences were being canceled.

By that point, we had called a number of meetings of our Regional Senior Judge's Council. RSJ Council is comprised of the Chief Justice, Associate Chief Justice, Senior Family Judge and all 8 Regional Senior Judges. At these meetings, we acknowledged we have a situation which may require having to suspend in-court operations and how are we going to do it. Because the technology that we had was essentially telephones and email, and that wasn't going to do it. With nothing else, we had to craft a rudimentary process that would allow the Court to operate, relying only on these basic technologies.

That weekend we made the decision to suspend in-person operations. This was not a decision made lightly. We did, at all times, as RSJ Council, recognize that we have a very unique position in Ontario society. It's absolutely essential that the courts remain open. We knew, at that point, all we could deal with would be urgent matters. Over that weekend, we issued the notice to the profession advising of the suspension. We released it on the Monday, effective the Tuesday. In making this decision, I obviously was in consultation with Chief Justice Strathy from the Court of Appeal for Ontario, and Chief Justice Maisonneuve from the Ontario Court of Justice, and RSJ Council, as I indicated. We also reached out to senior members of the Civil Family and Criminal Bar, as well as the Attorney General, Doug Downey. That's how it sort of started.

David Milosevic:

I would note as well, Chief Justice, that despite the need to suspend some of these in-person attendances early on, the court itself never ceased functioning, it never actually ceased operations.

Chief Justice Morawetz:

We never ceased operating. While obviously not socializing the way I once did, I would be out in my neighborhood, and I began to hear some people say that the court is closed. It was also misreported in the media that we were closed. They're quite surprised when I would say, "No, we never closed." There were a lot of people working very hard to get the Court to the point where we were able to continue to hear matters, even during the very first days of the pandemic

Chief Justice Strathy (ONCA):

We made it clear from the outset that we would remain open for urgent business, which we did. Particularly in some urgent family and criminal matters, including bail applications. But we also use the time in March and in

April to prepare ourselves to deal with our workload on both a remote (video) basis and using digital materials. So about the beginning of May, we were ready to do that.

Essentially, we had to reinvent the way we worked from the ground up. That included preparing ourselves and counsel to deal with matters entirely in electronic media. In the sense of having a digital documents instead of paper. We decided early on that we could not continue realistically to operate on a paper basis during COVID. So everything had to be filed digitally, and everything that had already been filed in paper had to be converted to electronic format. We produced practice directions and guidance to the profession on how they were to file materials. All of the details that you need to go into in terms of how they were to be prepared for our use, and for counsel's own use. We also investigated various forms of remote hearing technology.

We already had virtual based courtroom called CourtCall, which we started with initially and operated with for a couple of months before we converted to Zoom like everybody else. That too meant we had to develop protocols and procedures for electronic hearings. We decided early on to essentially case manage all pending appeals. All the appeals already scheduled in April, May, and to some extent in June, were case managed. Some of them were heard by conference calls, some were heard in writing, and still others were heard remotely via Zoom, while others were adjourned at the request of counsel.

Our number one priority from the get-go was the health and safety of the people who work in Osgoode Hall. I include counsel and litigants as well, of course, as our staff. We were very concerned to ensure that our staff could operate safely. To the extent possible many of our staff started to work remotely. From the very beginning the judges' secretaries work remotely, the staff lawyers, and law clerks worked remotely. Of course, many of the judges worked remotely. But health and safety were very much at the top of our concerns,

David Milosevic:

Where are we now in adapting the system from an infrastructure point of view, and administratively to deal with COVID?

Chief Justice Maisonneuve (OJ):

I think if we were to sit down and do a map of what it was like pre-COVID and what do we have today, I think we've got a great deal to be proud of. We've done an enormous amount of work. So, right now in the OJ, and this is not me doing it alone, it's all collaboration from all stakeholders. Lawyers in the criminal law world, the Criminal Lawyers Association, the ministries, corrections, everyone together put their heads together to come up with solutions. And the Attorney General's Office, of course.

So how has it changed? Well, right now in many areas, we are able to offer either an in-person hearing, if necessary; a dual hearing, which is what we're seeing the most, which is, I could do this expert witness by Zoom, but I do want to cross-examine this witness in person.

So we have to be able to turn on a dime in a courtroom. To turn on a dime and say, "Okay, now we're going to a Zoom proceeding. Here we are." And I think that in many of our courthouses, we have that. However, we have a lot of work to do where the infrastructure does not permit it. Things like not enough bandwidth to run enough Zoom lines. Because some of our courthouses are very old, and nobody thought about doing anything virtually when those courthouses were built. So it's a major undertaking.

Others, it's much easier, and those have been done. I must say that the work of the Attorney General's Office and the Ministry to try to put this in place has been remarkable, and they've done everything they can in the circumstances. But where are we now? I think we're not there yet.

A lot better than where we were in March, David, but far from perfect. There's a lot of work that remains, but let me just say that I am very proud of how much we have been able to achieve. I'm also grateful for the efforts of many, many bar associations, the OBA in particular, and local law associations, the Advocate Society, the Criminal Lawyers' Association, right across the board, too many to name, but they've been absolutely essential. We've also had tremendous cooperation from the Attorney General, and his Deputy Attorney General David Corbett, who took over in that position this past August. They have recognized the technology shortfalls that the Ministry had. We worked with them. I think the modernization progress we've made has been incredible, but we've also had a lot dedicated and hardworking members of the court staff, masters, judges, right through the whole legal system.

Chief Justice Morawetz (ONSC):

Where are we now? As of the end of October, and that's the most recent info I've got, we've conducted in excess of 64,000 virtual hearings. That number is astounding and-

David Milosevic:

I wouldn't have expected that number, Chief Justice, that's something.

Chief Justice Morawetz:

It's growing obviously every day, but the OBA deserves an awful lot of credit. Elizabeth Hall and Jonathan Clancy on the technology end, they were the ones who provided the court with its first Zoom lines. While the Ministry has now provided the court with its Zoom lines, we simply would not have been able to maintain the operations the way that we did if the OBA had not been first off the mark in offering the Zoom lines. We also received tremendous support from The Advocates' Society who, with the OBA, set up an advisory team to enable electronic hearings.

I'll also put a word in for the court's regional managers and the trial coordinators who report to them. These 120 people are essentially the backbone of the Court's response to the pandemic. I know from personal experience that they've been working daily and into the evening and on weekends. They're the ones who take the direction from the judges to reschedule court events and have enabled our judges to work in new ways. For many months, they were the single point of contact between our judges, and litigants, lawyers, and the media. The entire legal profession owes them a tremendous debt of gratitude. They've been the court's heroes throughout the pandemic.

Chief Justice Strathy (ONCA):

Well, we've had sort of two stages. One was the once we started operating remotely, we were able to operate, I would say pretty efficiently using Zoom hearings and electronic materials. So in June, and to some extent July, and August, we were hearing multiple appeals in the course of each week. We had two, sometimes three panels of three judges each hearing appeals. Although we went a little bit slower in the summertime, just because there's always a bit of a lull, we picked up in September and October and we were hearing a significant volume of appeals remotely. We started in October, mid-October to hear a few selected appeals each week in-person. Like the trial courts, we equipped one of our courtrooms with plexiglass and other, other safety precautions, so that we were able to actually hear some live in-person appeals.

That proved to be quite successful, but about the 19th of November, as we moved into a more restrictive phase in the province, we had to abandon in-person appeals. The in-person appeals, and we've been continuing in

Zoom ever since. Obviously, we're going to be continuing in that mode and until it's safe to gradually return to in-person appeals.

David Milosevic:

Is there a lot of a backlog in the Courts?

Chief Justice Morawetz (ONSC):

David, we have a hard time tracking data right now. Our data entry is not up to date, and data we would typically use to measure backlog is not current. The backlog, anecdotally from many reports, is growing. We just don't know how much is there. What we are able to discern at this time is that there have been approximately 30 to 35% fewer events this year than in past years. That's going to translate into a backlog. That's going to require counsel to continue levels of cooperation, and perhaps to take a look at whether there are alternative ways of resolving disputes, whether through mediation, arbitration, or through settlement-focused negotiations among counsel. There's going to be a period of delays as the Court chips away at its backlog. But with new technologies, we are able to hear more matters each month. I know that our judges and masters are committed to doing their part to deliver justice as swiftly as possible.

Chief Justice Strathy (ONCA):

It's actually quite fortunate in our court. Because of the way we work, we obviously don't depend on in-person appearances. We don't have witnesses, we don't have juries. So we have the good fortune of being able to operate entirely remotely. Actually our output has been quite significant, relatively speaking. We've heard approximately 600 appeals between May and December of 2020. We've released an equal number of decisions during that same period. That is significant because it really means we're operating at about three quarters of our regular capacity. Because the output of the trial courts has been reduced we don't expect to have any backlog coming out of COVID. We'll be basically be able to keep on top of our work. That's just a matter of good fortune, really, because of the way we operate.

David Milosevic:

What are the main problems that the concerted push for court modernization spurred by the pandemic is meant to address and how is it doing so?

Chief Justice Maisonneuve (QCJ):

The issue, David, is that we are a paper-based process. When you charge someone criminally, there's still the police officer who goes to a courthouse, brings a piece of paper, has a judicial officer look at it and get it sworn. That paper follows. In the family files, you still file paper and we still print. So we've done great, great work at changing that. And projects that we had been working on for five, 10 years have just completely gone into quick mode. And we have advanced the paperless route very, very fast in the last nine months.

So for example, we have a project called eIntake. eIntake permits a police officer to file electronically safely, securely, their documents for a judicial officer to review. And the judicial officer can then just electronically sign the document if he thinks that everything's been met legally. And that is sent back to the police officer without the need of having an officer come into a courtroom. It sounds silly, sounds small, but this is a project we've been working on for five years, with all of the security that's needed around that.

Well, can you imagine a person in Northern Ontario, where the nearest courthouse is two hours away in the middle of winter where a police officer has to drive to a courthouse to just file the information? Well, this is where the doors open, if we can just continue moving that forward. And I'm very grateful that it has moved forward. We're actually rolling it out across the province with the hopes that it will be done in 18 months all across the province, where we will now finally have an electronic document instead of a paper document to work with.

Same with family. We are looking at how we're going to file. And the Superior Court has started with CaseLines, which is an incredibly good project, and we are about to do the same. And now we're both looking, both courts, at how we can start filing, maybe through a CaseLines, electronically our criminal documents. You want to bring a motion, you can file it electronically.

So court has changed dramatically from what it was, and there's more work to be done. And we need to be paperless, and I hope that's going to happen sooner than later. And I think with every crisis comes an opportunity, and maybe this is something that's going to come out of COVID. We've been through so much, but maybe there'll be some good news that will come out of COVID for the criminal and family court system.

Chief Justice Morawetz (ONSC):

I think we're getting into another area, David, which is we're piloting CaseLines right now. This is a document sharing platform; it's not a filing system. You still have to file in the normal way or through one of the Ministry's new e-filing systems, but then the bar will be responsible for uploading their documents in to CaseLines once it has been filed. Our judges and masters are being trained on it, and there's a lot of effort being made for our court staff and the bar to be trained as well. From the judges and lawyers who have used it, they've agreed that it is a game changer as to how we're going to conduct any court hearings of any type. Not just now, but well into the future. It's fairly simple, when you look at it, it's very user-friendly, but like with anything else, it's going to be through repetition, repetition, repetition, until it becomes second nature. That's one area.

The second is, and I mean this with all sincerity, the cooperation between members of the bar, regardless of whether it's parties and lawyers supporting your position or opposing the position. We have seen behavioral changes that have been very positive. I do hope that that's not temporary and it will continue.

Chief Justice Strathy (ONCA):

We didn't anticipate that COVID would push us into the 21st century in terms of technology, but it's actually opened up some huge opportunities for us. It's resulted in my colleagues and I becoming far more familiar with the capacity of technology to assist us in our work. Some of our colleagues who, who used computers very infrequently are now real converts. Well, we now know that people are getting comfortable with the technology.

David Milosevic:

What are the benefits of the push toward court modernization and the increased use of virtual hearings? Are there any risks that some people might be left out or left-behind by these changes?

Chief Justice Maisonneuve (QCJ):

Well, the benefit is probably the front end of the system, the filing, the first few appearances, the case management, either in family or in criminal. The benefits are perhaps in, especially in this pandemic, but for the future, maybe having access to justice a little quicker. Because to have a judge who can do judicial pretrials on a Zoom line with counsel if they agree, you may be able to do that and still be meeting with a client at 10 o'clock. And you don't have to travel all the way from Toronto to Brampton by car, which could take you hours. So those are the obvious benefits.

In some remote areas the internet is spotty, thinking about all of our fly-in courts, where we deal with many indigenous individuals. The internet is not as easily accessible as it is here, either in Toronto, or where I'm sitting now in Ottawa. So, I think we have to be very careful that access to justice be met.

So my vision is that we have to be able to offer all three types of hearing: totally in-person; totally virtual; or a dual hearing, where a lawyer or an accused could say, or a Crown, "Look, I'd like to do this expert witness virtually, but I want this witness to come in and be cross-examined." I think in order to have all the safeguards in place, all three options must be available.

But we must be very careful, David. We must be very careful that access to justice goes both ways. So, there's a benefit to access to justice. But in our courts, and especially in our court, we deal with the most vulnerable. Not everyone has the technology to be able to do that. Not everybody can get on a Zoom line for an hour on their phones because they don't have a phone, or they don't have access to the internet.

And we can't just continue down the virtual track, because you're right, David, some cases just need to be argued in person. And we need to be able to offer that to have a system that's nimble, and that can turn on a dime quickly to be able to meet all the needs, and to make sure that fairness is protected.

I think we have to be careful. And I think after all this is done, it would be great to sit down at a round table and say, "Okay, what have we learned? What works, what doesn't work? What can we do better?" And we need to hear from everyone. And especially members of the bar, and everybody who are the stakeholders using the system. And I think we need to set that up somehow.

Chief Justice Morawetz (ONSC):

There are going to be, with any type of a change, it's going to be a dislocation for certain members. I guess the easiest way to answer is to ask what happens if you don't modernize? Every aspect of society is modernizing, some more drastically than others. I think it's important, though, that we recognize that we have to have access to justice for the most vulnerable members of society - individuals, obviously. Some will not have the technology, some will not have the economic ability to access the technology, so you have to ensure that steps are taken to ensure that those members of society are fully protected. You'll have other groups that are resistant to change, and we have to be patient with them.

The ability to adapt to change is also a factor for the bar and judges alike - not every lawyer is going to be applauding what I've just said for the past 15 or 20 minutes. Nor will every judge. We cannot achieve a hundred percent perfection right across the board, but I think some of these changes that we've outlined are inevitable and will make the system more efficient for all.

The bar has been asking for years for an increase in access to single judge case management. With CaseLines and with some of the other technology changes, a judge will be able to access an entire file wherever they are. So, where we've been able to have a lot of case management - perhaps in Toronto where you don't have true circuiting other than going from one side of University Avenue to the other side - we can begin to offer more case management elsewhere, including in regions that circuit. These tools will undoubtedly make judges far more efficient.

So, I think David, it's a great question. As I said, not everybody's going to be satisfied or enthused, but there is no alternative. Let me underline that again, there really is no alternative. We are going forward with this, and we have the full support of the Attorney General. The Ministry has come to the recognition that the modernization is required, and the commitment for a financial investment is now there.

This financial commitment will also enable an end-to-end electronic system that's going to improve our scheduling, as well as case management and file production. It will be a gradual change, perhaps more accelerated than some would want, but the positives, I think, certainly outweigh the negatives. At the same time, we have got to make sure that we don't have people falling aside, or through the cracks. We have to ensure that they've got proper access to our justice system.

Chief Justice Strathy (ONCA):

Yes, I think there are concerns. In particular the concerns of some self-represented litigants who do not have the resources that lawyers may not have a cell phone, may not have an access to a video platform. May not be able to deal with the electronic format of materials, and maybe far more comfortable in paper. Those individuals in particular, I think we need to find a way of ensuring that they have access, better access to justice through the digital platform, or find ways to accommodate.

We have a setup where if a self-represented person wants to, they can use a public cubicle or accessible cubicle where they can make their submissions from that, within the body of Osgoode Hall. But yes, we have to find ways of dealing with issues like that.

People have expressed concerns, "Does it give counsel from larger firms an advantage in terms of the resources that they can bring in to their virtual courtroom?" Some of them have actually constructed facsimile courtroom at their offices. Are they getting silent tips from their associates who are texting them or sending them email messages to deal with tough questions from the bench? Those questions have been asked. We haven't tried to police that, but there is concerns about that.

David Milosevic:

How would you characterize the support that you've received, both from the Ministry and the working relationship with the other Chief Justices both in the response to the pandemic and court modernization?

Chief Justice Maisonneuve (OCJ):

I have been completely fortunate to have [Chief Justice Morawetz and Chief Justice Strathy] by my side during this pandemic. I couldn't have asked for better. I can assure you that the three courts from the very, very beginning have been working extremely closely. We do our best to speak with one voice. We decided from the very beginning that we needed to remove the chaos as much as we could for the people using our system.

But I don't think, and maybe other chiefs could tell me differently, but I don't think there's ever been a time where the three courts have worked so collaboratively together to deal with this pandemic. And I could certainly not have done it without them. And that includes working with all stakeholders. The Ministry, the Attorney General's, and all of the different stakeholders, the bar, the Crowns, everyone working together. But for the three chiefs, I am totally fortunate to have those two by my side, and for us to be rowing in the same direction.

Chief Justice Morawetz (ONSC):

I'll start with the Ministry. I think it's always important to remember that the courts are the independent third branch of government, and that the Ministry has its own separate obligation to support the Court. So yes, we interact with the Ministry, and the Ministry of the Attorney General is probably the most frequent litigant that we come across in our courts. But our court must always be protective of our independence. Not for our own sake, but for the sake of the public that we serve. The Court must vigilantly insist upon its own administrative independence, or it risks being perceived as an arm of the government, or worse, beholden to government for

administrative decisions that the government makes. The assertion of the court's independence is the reason why the Chief Justice of Canada has struck a new accord with the federal government over the administration of the Supreme Court of Canada.

We've made no secret of the fact that we would like to achieve a new working relationship with the Ministry, one that recognizes that independence and gives us far more decision-making in terms of our administration. We're not expecting or wanting in any event to be the masters of our own financial future, because that's rightly the purview of the elected government, not ourselves. But the judiciary must have an ability to provide meaningful input to Treasury Board when it makes funding decisions, to be consulted on major spending or infrastructure decisions, and to be able to exert administrative control over the staff and technologies that are required for the Court to function. This is essential so that the financial investments can be made where they're going to make a real positive impact on the courts.

One of the areas that we're working closely with the Ministry on is technological change. A lot of it is being driven by judges. We're not shy in telling the Ministry what we need and why we need it. That is a change from past practices, and one that we're going to continue.

As far as my relationships, and our court's relationships, with the Court of Appeal for Ontario and the Ontario Court of Justice, I think you are seeing that all three Chief Justices are delivering the same message. We meet regularly, not, obviously, in-person, but virtually. If there are changes and notices that are required on a daily or weekly basis from our office, and I think we're probably setting the record with the most number of notices to the profession this year, each and every one of them, we are informing the other court, the Ontario Court of Justice in particular, because what we do impacts what they do. The lines of communication are wide open. It's a very positive, positive feeling among all three courts.

Chief Justice Strathy (ONCA):

I would say in many ways, this crisis has brought out the best in the justice system. There has been extraordinary cooperation between the ministry of the Attorney General, and my colleagues, and myself in the course of this pandemic. We've had regular meetings on a weekly basis. Sometimes more often than not as the need arose. There's been very positive dialogue.

As I said earlier, the number one concern from the get-go has been the health and safety of everyone. But the other concern has been to ensure that the courts have the resources they need to continue operating in the pandemic. They've been responsive, they've been attentive, they've been timely. They've consulted us every step of the way. So it augurs well for the future. On the broader subject of modernization, I will say the Court of Appeal has been ahead of the game. We have in the past two years, begun a significant modernization project with the full support of the Ministry of the Attorney general. It will modernize both our internal registry of the court, how we manage our data.

In fairly short order after that part of the project is complete later next year, we'll be moving to an electronic filing system... full electronic filing for the Court of Appeal. After that, expanding it to internal use by the judiciary. We proposed this project more than two years ago now. We were supported by the ministry. They saw it as an opportunity to test out the concept of a digital registry, or a better digital registry than we had. It's moving along very well.

David Milosevic:

Is there anything the bar can do to assist?

Chief Justice Maisonneuve (OCJ):

So, talk about the bar, let me start with the end. I want to commend the OBA for the help that they've provided to us.

You'll remember that you came in, and you right away immediately offered us some Zoom lines to be able to function. That was a savior for us. We used them in our family courts, and as a result, we were able to do a lot of work that we otherwise couldn't have done. And when you think about family, those are very serious cases that are urgent, that need to be dealt with quickly. And the help of the OBA was tremendous, and thank you to your organizations for helping. And there's a sign of working collaboratively. Even though we have different responsibility, I think the bar and the judiciary came together with the government to try to find a solution. So for that, thank you.

Chief Justice Morawetz (ONSC):

Again, I want to just pass on my appreciation for everything that the OBA has done. I guess one of the other, it's been a very difficult and tragic year for many, but one of the positives has been getting to know a lot of the OBA personnel and the profile of the association has had in the past nine months in particular has been noted, and we look forward to continuing that in the years to come.

Chief Justice Strathy (ONCA):

As I said earlier the bar has been assisting us throughout. We've consulted with the bar both with specific institutions and with individual groups of lawyers to help us to identify their needs and the needs of their clients. I think certainly again, this is a process that we will be going through ourselves in the Court of Appeal as we develop our new electronic filing system, and as we're interacting with the bar, and we'll be consulting with the bar.

In the course of that project to determine what we need to do to ensure that they can work effectively with our system. So we feel we have a strong relationship with the profession. I would say particularly those who appear in our court on a regular basis on appeals. But obviously any lessons learned by the bar in dealing both during this crisis and after the crisis, we would certainly like to hear about.

David Milosevic:

I know our members are quite interested in the issue of the future of in-person oral advocacy. Where do you see that role continuing in the future, if at all?

Chief Justice Morawetz (ONSC):

It's a great question, and one that has been asked in a variety of ways. There will, and always will be, a place for in-person advocacy. That's where I really want the emphasis to be on, to preserve that.

Going forward, I think what you will see as far as the virtual hearings - and this is in a world that's hopefully post pandemic - will be that the non-substantive matters, whether they be scheduling consent, or unopposed matters, will be handled only virtually. Part of that will be an increase in in-writing motions where appropriate.

Then that leaves you with courtrooms that should be reserved for substantive matters, where advocacy counts. If we're facing a very complex application, motion or trial, in-person advocacy in a courtroom is a much better and effective environment, that will command the respect such cases require.

That's where the premium is going to be. And yes, in-person oral advocacy absolutely is still going to be carrying the day. As a judge, I quite enjoy having two or more counsel, extremely well-prepared, deliver well-briefed, arguments That's the most pleasant day in court that one could have, and I look forward to having more of them, and in the near future.

Chief Justice Strathy (ONCA):

I get asked that a lot. I just got a letter today from a very senior counsel asking me... he was about to retire, but said, "I wonder about the future of oral advocacy." My answer is: there is a great future in oral advocacy.

The court likes oral advocacy. Nobody really likes the Zoom world. It's not the same for lawyers who are used to practicing in our court. It's certainly not the same for the judges. I think although there may be some cases where it's okay to do a remote hearing. I think of the case where counsel is out of town and it's a significant hardship to counsel or their client to join us in-person. Fair enough. But I think we all feel that there's a dynamic in the courtroom when what I'll call a "hot" panel of judges who are ready and thoroughly prepared, as we always are, to hear the appeal.

Where counsel come in, and there's a dynamic exchange between council and the bench... We miss that. We think counsel do their best work when they have the benefit of that, and we do our best work when we have the benefit of that. We also, although you don't see it when you leave the courtroom, after every appeal we immediately caucus and discuss the appeal. Although we can do it by Zoom, and we are doing it by Zoom, it's not the same as when we're together in the retiring room after the appeal. The submissions are still ringing in our ears. We talk about the issues on the appeal, we vote about how we would decide the appeal. If someone has a disagreement, we'll talk about it. We engage thoroughly and immediately with the issues on the appeal. We have a coffee, catch up on news, talk about personal issues. We miss that personal contact with our colleagues.

So advocacy in the Court of Appeal it's alive and well, we're really looking forward to getting back to in-person advocacy. I myself sat November, while we were still hearing in-person appeals. Everybody loved the experience, leave aside that you're looking through plexiglass, but everybody was happy to be back in a real courtroom as opposed to a "virtual" one. We can't wait to get back to it.

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