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COVID-19 is the Justice System's New R v Jordan: A Fireside Chat with the Honourable Chief Justice of Ontario George R. Strathy

As the justice system continues to adapt and respond to the COVID-19 crisis, advocates everywhere are faced with new challenges in the administration of justice. Yesterday, the Honourable George R. Strathy, Chief Justice of Ontario and President of the Court of Appeal for Ontario hosted a virtual fireside chat to share the perspective of the judiciary, discussing the effects of COVID-19 on the administration of justice and lessons learned.

COVID-19 as a Catalyst for Change in the Judiciary

COVID-19 took everyone by surprise, including the Court of Appeal of Ontario. Before the pandemic hit, the Court was already considering technological improvements, including a comprehensive e-filing system. But when the pandemic hit, the Court of Appeal was forced to pivot and leverage its existing electronic capabilities to respond to this new reality.

The Court of Appeal leveraged its existing electronic capabilities including e-filing by e-mail and CourtCall to respond to the new reality of virtual administration of justice. Before COVID-19, CourtCall was used occasionally by counsel calling in remotely. Today, CourtCall has been adapted so that counsel, judges, and any other participants can appear in court.

One concern that has been raised repeatedly by advocates is the impact of COVID-19 on in person oral advocacy. The Chief Justice believes in the value of oral advocacy but noted that Courts have had to adjust their operations to deal with matters remotely to fulfill their public responsibilities and ensure fair and effective resolution of disputes.

One step taken by the Court of Appeal has been to case manage every single case. Judges of the Court of Appeal have been assigned to sit down with counsel and find solutions that work for the parties. Currently, there are three options:

- writing hearings, with the option of addressing questions

- by teleconference;
- CourtCall hearings with remote argument; or
- delaying cases into the future (which as noted by the Chief Justice has been only a “tiny fraction” of cases).

While the lessons learned from COVID-19 may lead to a dialogue about whether oral argument will be available for every single case as a matter of right, the Chief Justice believes oral advocacy is and will continue to be a key part of appeals in the Ontario Court of Appeal.

The Chief Justice also noted that all levels of Courts have been working together in unprecedented ways, a positive trend he believes will carry on into the future.

Challenges Facing the Judiciary

Chief Justice Strathy also discussed challenges facing the judiciary and highlighted the lack of administrative independence as being particularly challenging in responding to the pandemic. Because of the unique features of the structure of the judiciary, it is legally independent from other branches of government but administratively dependent on them.

While the Chief Justice noted there has been tremendous support amongst all branches of government in responding to the COVID-19 crisis, the pandemic has highlighted shortcomings in the Court’s ability to respond. For instance, the Courts are not able to demand resources (such as additional staff to assist with a video hearing) or dictate how those are to be deployed; they must ask other branches of government to approve those requests.

The Chief Justice stated that because of the lessons learned during this pandemic, it may open a dialogue into the future regarding the structure of the judiciary, including its independence.

Adapting for the Future: The Way Forward

In reflecting on the swift pace of change that has been triggered by the COVID-19 response, the Chief Justice views the COVID-19 pandemic as the new *R v Jordan* for the entire judicial system: it has forced all participants to reflect on how the system has been operating and has opened our eyes to how things should change.

The Chief Justice noted that while technology has helped in that response, it is not the full answer. The Chief Justice hopes that as we move forward out of this crisis, we reflect on the judicial system and consider how it can be improved to get to the bottom of what really matters to ensure justice is done. It is

about a dialogue where we talk about how we can do our jobs more effectively with less resources in a way that instills confidence in the public. The Chief Justice hopes that this pandemic is a catalyst to build a new, improved justice system for all.

Outside of the administration of justice, the Chief Justice reminds us all to reflect on this time and prepare for what is ahead. This is an opportunity to remind ourselves of what is important in life, to be fortunate for what we have, and to prepare for the next stage in this challenging experience.