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CAJO



JUDICIAL REFORM AND
INSTITUTIONAL STRENGTHENING
(JURIST) PROJECT

Canada

ADAPTING TO THE COVID-19 REALITY: A ROADMAP FOR CARIBBEAN JUDICIARIES

OUTCOME REPORT

May 2020



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Definitions

Courts – Judiciaries and Tribunals

State Agencies – Offices of Attorneys General and Directors of Public Prosecution

Bars – Bar and Law Associations (local and regional)

Organisations – any combination of Courts, State Agencies, and/or Bars

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Background

The World Health Organization (WHO) on 11 March 2020 declared the coronavirus disease (COVID-19) a pandemic. The deleterious effects of COVID-19 have permeated virtually every facet of global society. The justice sector the world over has not been spared.

On 24 April 2020, Global Affairs Canada (GAC) hosted a meeting under the theme, 'Immediate Responses to the COVID-19 Pandemic', for the Judicial Reform and Institutional Strengthening (JURIST) and the Improved Access to Justice in the Caribbean (IMPACT) Justice Projects. During that meeting, it was suggested that a regional forum be convened with justice sector stakeholders to discuss and assess the impact that the Coronavirus disease (COVID-19) pandemic has had on the justice sector within the Region.

In support of that suggestion, the Caribbean Court of Justice (CCJ) together with the Caribbean Association of Judicial Officers, CAJO, collaborated with the CCJ Academy for Law (CAFL), the JURIST Project, and APEX - Caribbean Agency for Justice Solutions to convene an online forum. It was decided that the need to engage in such a regional situational analysis and dialogue with justice sector stakeholders, all with a view to ascertaining best practices and settling concrete interventions going forward, was an urgent priority. Accordingly, the forum was convened on Thursday, 7 May 2020 from 1:00pm to 4:30pm (AST) using the Zoom platform. The theme for the online forum was **Adapting to the COVID-19 Reality: A ROADMAP FOR CARIBBEAN JUDICIARIES**.



Introduction

The regional online forum on “**Adapting to the COVID-19 Reality: A ROADMAP FOR CARIBBEAN JUDICIARIES**”, which was held on Thursday 7 May 2020, was attended by 115 participants from across the entire Caribbean region. Judiciaries, Offices of Attorneys General, Directors of Public Prosecution, and representatives of Bar Associations from twenty-two Caribbean countries were in attendance.

This report provides a summary of the data collected from a pre-Conference survey which was sent to all invitees, the discussion from the Conference, data from a post-Conference survey, as well as submission from four Caribbean countries regarding the challenges they have faced.

Based on the feedback received from the post-Conference survey, 88% rated the Conference as very good to excellent. The overall average rating based on content, discussion, organisation, and use of technology was 4/5. One hundred percent of respondents indicated a desire and willingness to participate in follow-up conferences.

The data was compiled and analyzed to extrapolate and present emergent themes and sub-themes. **Themes** are the broad “umbrella” ideas that are frequently represented in the data received; and **subthemes** are the commonly present ideas that fall within these broader themes.

The next section captures the discussion organised in three categories (Challenges, Actions, and Support Required), and ordered by priority based on how frequent the theme/subtheme emerged. Each challenge is discussed together with its corresponding actions and required supports.

This report ends with providing recommendations.

Exploring the Challenges, Actions, and Support Required

The data and discussion coming out of the Conference revealed seven (7) major Issues and Challenges that Caribbean countries are facing amid the COVID-19 global pandemic. As explained in the Methodology above, data collected in the pre-Conference survey and from the discussion at the Conference, was analysed and themes and sub-themes were seen to have emerged. Inevitably, the challenges faced by Courts, State Agencies, and Bars across the Caribbean are interrelated.

Though not easily separated from each other, the challenges are represented in themes (categories) that allows for focused and decisive action and solution-finding. It is the intention of this report, as mentioned above, to inform timely and appropriate responses to these related challenges. The goal is to ensure that both access to and the due administration of justice remain as uninhibited as possible given these unique circumstances faced by institutions word over.

Challenge 1: Insufficient Technology

Based on the data, insufficient technology to quickly and properly adapt to the challenges raised by the COVID-19 pandemic appeared to be the most significant issue which Caribbean countries are facing. Data showed the major technological challenges as:

- a. Lack of proper systems of online/e-filing of matters
- b. Insufficient access to virtual hearing platforms for the conduct of and participation in trials
- c. Poor or inadequate internet connections
- d. Disproportionate disadvantages faced by Magistrate's Courts
- e. Lack of equipment to allow staff to work remotely
- f. Lack of online systems for payments of fees etc
- g. Lack of electronic archiving, document storage, and document exchange
- h. High costs for the implementation of appropriate technology
- i. Quality of video and audio recordings from web-based software
- j. Difficulty in logging hearing notes remotely
- k. Standardisation and compatibility of software and programs between and among the Courts, State Agencies, and the Bar
- l. Lack of support and training for the use of technology
- m. Uncertainty as to what technology is appropriate for use by courts

Notably, Courts across the Caribbean have held virtual hearings; with 46% of respondents from the survey stating that these were frequently held and 41% stating that they were sometimes held (see Fig 1 below)

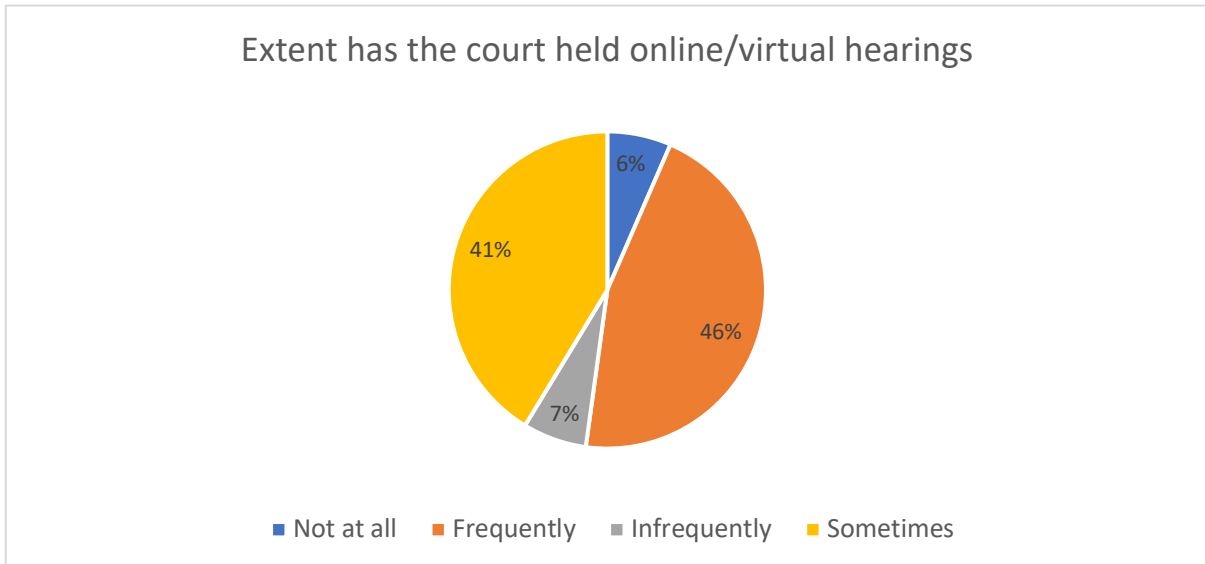


Fig 1: Chart showing the extent to which Courts across the Caribbean have held virtual hearings

Respondents maintained, however, that access to virtual platforms remain insufficient as not all Courts have sufficient equipment to facilitate the usual number of matters that are heard. This is inextricably linked to the lack of equipment which arose as a prominent issue faced by Court, State Agencies, and Bars across the Caribbean. One respondent noted that, “...*Counsel use their personal (mobile) devices to enable the process. The inability to observe physical distancing when required to make physical appearances in court; as the Court only has one set of equipment to facilitate virtual hearings, counsel is required to attend one court in person...*”

Beyond virtual hearings, when asked whether their Court’s technology infrastructure is capable of supporting electronic court processes, 48% stated their Court was capable and 35% stated that their Court was somewhat capable. Further, according to Fig 2, 13% believed that their Court was not at all capable and only 4% believed their Court was very capable.

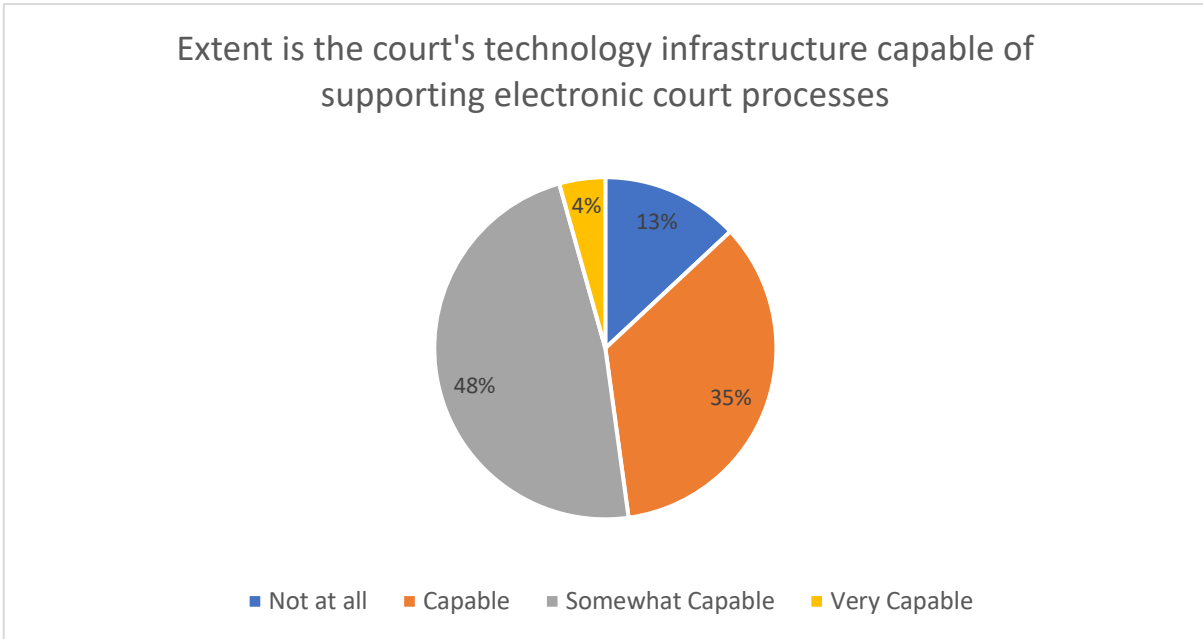


Fig 2: Chart showing the extent to which Courts across the Caribbean can support electronic court processes

Though Courts have been deemed generally capable, the data showed that such electronic processes remain widely unused or not at all established. The lack of e-filing software was the most prominent technology issue faced by Courts and remain closely linked to the lack of facilities to support other online processes such as payment of fees. As one respondent noted, *“We are unable to manage the court remotely as so many of our processes (e.g. cashier services, forms etc.) are not available/accessible electronically.”*

Actions Taken

In response to the challenge of insufficient technology, Courts, State Agencies, and Bars have adopted interim measures to prevent exacerbated delay to the administration of justice. A number of the organisations have shifted to virtual hearings using a variety of platforms including Zoom, Microsoft Teams, and even Skype. Video link to prisons, the use of the mobile phones (WhatsApp groups, phone calls) to conduct business, the provision of laptops to staff where available were also some further interim and urgent responses to the challenge faced. However, as mentioned above, sufficient and appropriate access to such platforms and the required supporting technology remain a challenge faced.

Even though there is generally a lack of formal e-filing systems, many organisations have adopted electronic filing through the use of email and other web-based services. Relevant Practice Directions have been issued in this light, and to facilitate remote work, including branding Judges’ homes as courtrooms.



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Support Required

Though many Courts, State Agencies, and Bars have adopted interim measures, many of which may be marginally fit for purpose at this time, there is a call and real need for support in this regard.

Courts, State Agencies, and Bars across the Caribbean emphasised the need for increased technological capacity. Wider access to appropriate equipment and software for all relevant stakeholders, including *pro se* litigants, remains a top requirement. This would aid in the facilitation of subsequent needs such as virtual hearings, e-filing and registry processes, as well as access to centrally developed library services.

Intrinsic to the development of and call for support for increasing technological capacities, organisations reiterated the need for legislative support. These needs related to online recording and transcripts, evidential rules for videoconferencing, and any relevant logistical support.

Challenge 2: Health and Safety Precautions

The second most prominent challenge faced by Courts, State Agencies, and Bars was the health and safety of all stakeholders. Organisations expressed their challenges as:

- a. Concern for the health and safety of staff
- b. Concern for the health and safety of jurors and witnesses
- c. Lack of PPE for staff working in office
- d. Difficulty for staff to adjust to working amidst the pandemic
- e. Stress and psychological trauma caused by current conditions
- f. Lack of therapy/counselling for crisis management
- g. Difficulty to have bail sureties due to the need for physical contact
- h. Ability to address instances where staff/customers/users of legal services may show flu-like symptoms
- i. Possibility of staff relaxing vigilance over time
- j. Impact of extended use of computers for those working remotely
- k. Longer working hours and exhaustion for those working remotely
- l. Potential for new prisoners to affect existing prisoners

When asked to rate the extent to which their organisation has implemented policies and procedures to respond to the health and safety needs of internal and external stakeholders, 41% of respondents gave a score of 4 and 31% gave a score of 3. Fig 3 also goes on to show that an impressive 17% gave a score of 5 (with 5 being the highest rating).

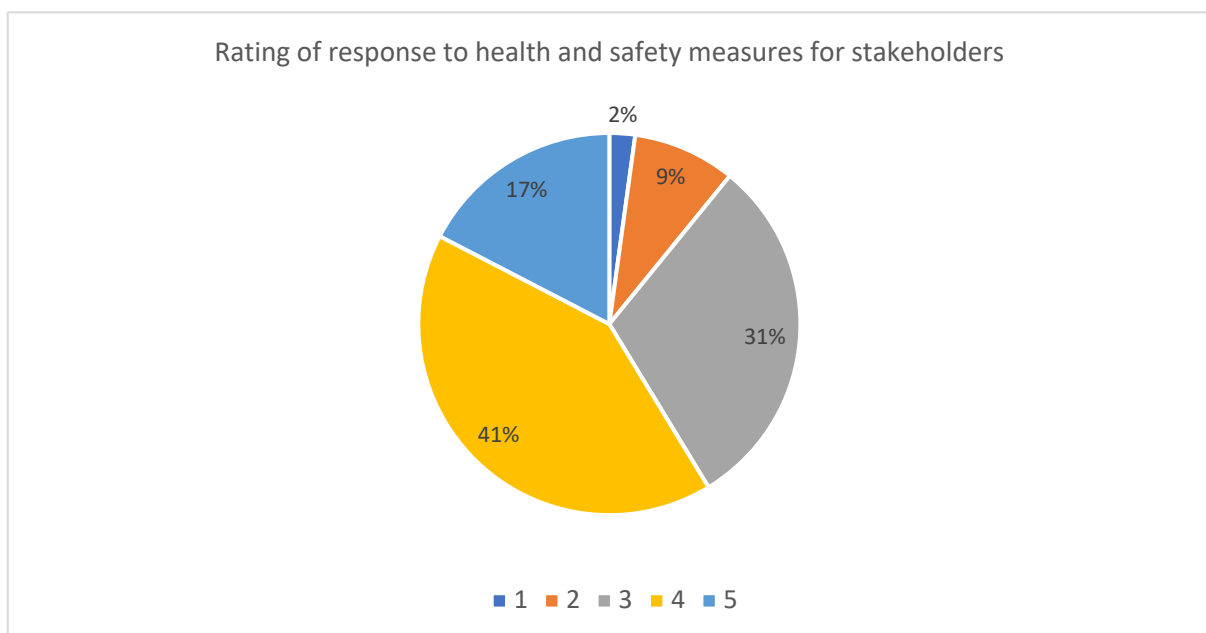


Fig 3: Chart showing rating of Court/State Agency/Bar implementation of policies and procedures to respond to the health and safety of stakeholders



These favourable scores reflect that Courts, State Agencies, and Bars all share the concern to protect the health and safety of all stakeholders. Notably, however, the lack of relevant PPE and procedures to cater for the protection of stakeholders going forward for an indefinite period of time remain salient issues which they face. These are exacerbated by the psychological impact which the pandemic has had. A number of respondents reported that staff are fearful to return to work.

Action Taken

In light of the challenges faced, various organisations have taken interim action to protect the health and safety of stakeholders. Based on the data received, the provision of PPE (masks, gloves, and other protective wear) remains a prominent immediate measure which needs to be implemented across the region. Further, where staff and customers still have to physically access offices, social distancing measures have been reinforced. Workspaces and public access areas remain constantly cleaned and many employers have opted to provide transport to for staff as the use of public transport remains a concern. Some officers have provided psychological support to staff, outfitted air condition units with purifiers, and installed plexiglass separators in certain courtrooms.

Support Required

Courts, State Agencies, and Bars highlighted the need for funding support for the provision of adequate PPE for staff and customers. In addition, funding support for retrofitting of courtroom and courthouse spaces with plexiglass enclosures remains a priority for many organisations, particularly high-traffic and heavily congested areas. Organisations also require support in the provision of psychological support for staff and note that increased synergies between and among organisations locally and regionally would be helpful.

Challenge 3: Delay

Delays faced by Courts, State Agencies, and Bars are the third most prominent issue as a result of restrictions due to the global pandemic. Delays have manifested in:

- a. Inability to conduct jury trials due primarily to social distancing requirements
- b. Inability to conclude cases (convicted persons awaiting sentence; absence of counsel)
- c. Shortened working hours
- d. Inability to have witness trials
- e. Having to re-list matters
- f. Ensuring productivity from remote locations
- g. Limiting movement including limited transportation to get to work, curfews, travel restrictions, and movement of prisoners
- h. Increasing backlogs
- i. Closing of non-court registries

Action Taken

To address issues of delay, organisations have engaged certain interim strategies. As mentioned above, organisations have instituted technological responses such as email/online filing and the conducting of certain matters through e-platforms. Further, and related, instituting work from home policies has allowed some, if not all, of the organisations' work to continue. In addition to these actions, many organisations have modified their services. Some Courts, State Agencies, and Offices remain open for 2-3 days per week with reduced hours of operation and staff on rotation. Further, there have been, in some instances, designated monitored spaces for people giving evidence, searches of cause books by appointment only, and unused office spaces in some cases have been retrofitted for pro se litigants. There has also been an increased focus on proactive Case Management Conferences across the region.

Support Required

To combat delay, most organisations have noted the need for legislative interventions. Legislation is required to allow for the following:

- a. Judge alone trials
- b. Reduced number of jurors



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- c. Change in the commencement of jury trials
- d. Establishment of virtual Magistrate's Courts
- e. Online recording and transcripts
- f. Change in limitations regarding witness evidence
- g. Evidential rules for videoconferencing
- h. Alternatives to sureties for bail
- i. Use of electronic signatures
- j. Removing the mandatory requirement for pre-sentencing reports
- k. Extending deadlines for the filing of IP related documents
- l. Deeming of judiciaries and legal services as essential services, certainly in times of emergency

These legislative interventions are required, according to the various organisations, to assist with delays experienced due to the pandemic. Beyond such interventions, organisations also noted the importance of strengthened remote work protocols to ensure business integrity and continuity.



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Challenge 4: Process and Evidence

Courts, State Agencies, and Bars have noted issues in process and evidence related endeavours due to the pandemic. These include:

- a. Inability to serve notices during lockdown/restrictions period
- b. Inability for affidavits to be sworn
- c. Difficulty in securing signatures of clients/witnesses
- d. Integrity of evidence received remotely
- e. Difficulty in ensuring *pro se* litigants' access to justice

Action Taken

Organisations have been unable to take interim measures to address all of the above issues as most require legislative attention. However, some Courts have retrofitted unused workspaces to provide *pro se* litigants with adequate room to conduct their work and research. Some Courts have also attempted electronic service (serving via email).

Support Required

As mentioned above, organisations have called for legislative intervention to remedy challenges faced in process and evidence. These include having legislation to allow for electronic signatures, extending of statutory deadlines, and changes to limitations regarding witness evidence.



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Challenge 5: Communication

Challenges around communication were faced by some organisations. Issues included a lack of adequate guidelines from all organisations on procedures to each other and court uses, difficulty in communicating with litigants, and general inter-agency communication.

Action Taken

Many organisations developed alternative methods to communicate with stakeholders including such as WhatsApp groups, Facebook pages, and other media. Additionally, in some jurisdictions, the Press has been invited to virtual hearings.

Support Required

Organisations reiterated the need for better inter-agency communication and suggested that regional communication networks between and among organisations be worked towards.



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Challenge 6: Capacity

Organisations continue to face practical challenges as it relates to the capacity of their institutions. These include:

- a. Lack of training for staff on technology
- b. General resistance to change
- c. Disproportionate application and implementation of measures to conduct hearings
- d. Slow acceptances by Bars/judicial officers to engage electronic processes
- e. Lack of infrastructure (see sections above)

Action Taken

Organisations have established committees to increase information technology capacity as well as create and distribute tutorials on the use of software.

Support Required

Organisations have emphasised the need for collective strengthening of remote work protocols, continued judicial education and staff education and sensitisation, and the sharing of knowledge products throughout the region.



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Recommendations

Based on the Challenges, Actions, and Support Required discussed above, the following recommendations are put forward for immediate consideration:

1. Coordinating a regional response to address common challenges;
2. Establishing a regional network for sharing and co-creating appropriate interventions;
3. Creating a regional repository of relevant Practice Directions, Protocols, and Legislation;
4. Sourcing funding assistance for the development of technology infrastructure in organisations across the region;
5. Implementing continued judicial and staff, behavioural change, and change management education and support, and
6. Organising and facilitating further web-based regional conferences to address these issues.