



TASK FORCE ON ADVOCACY IN THE 21ST CENTURY

STATEMENT OF PURPOSE

April 10, 2020

The coronavirus and COVID-19 pandemic ("Pandemic") have adversely impacted the entire world, including the judicial systems of the United States and Canada. The justice pipeline has been clogged in varying degrees and, while courts are developing ways to unclog it in a timely matter, courts are struggling with an efficient way to do so that protects the public and the rights of litigants and is reasonably accommodating to lawyers, not all of whom have access to or an understanding of technology or a willingness to learn or adapt to it.

The Pandemic has also shed light on how dependent the administration of justice is on the ability of human beings to interact in person with one another. It is fundamentally true that absent good cause (trade secrets, matters involving minors, etc.) the justice system should be completely transparent: people cannot be expected to have confidence in a justice system that is hidden from real-time public view. But it has become apparent that the justice system needs to figure out how to balance the need for transparency with the need to be able to reduce in-person interaction while administering justice, at least in circumstances such as those presented by the Pandemic.

Thus, the Pandemic has caused us to re-think certain aspects of the current way we administer justice: How much person-to-person interaction do we need? What can we do via the telephone, video, and remote video that allows justice to be administered fairly but reduces the amount of direct human interaction? How do we maintain transparency while we change the way we administer justice? How do we protect the constitutional and human rights of victims and citizens accused of crimes in this new world? How do we conduct discovery, especially depositions, in a world where in-person interaction poses a risk to everyone involved, and to what extent should the system require other than in-person participation? What about trials in general and jury trials in particular - how do we protect the sacred values advanced by trials in open court while still protecting the health and safety of the participants? The same issues arise in appellate arguments – how do we protect those involved in these important proceedings? And, how do we make any changes deemed necessary to administer justice while leaving the parties and the public with the sense that justice has been done?



The purpose of the Task Force on Advocacy in the 21st Century is to develop the College's expertise on the issues that will confront the administration of justice in a post-Pandemic world, in particular those issues that impact the discovery component and trial of civil and criminal cases and oral arguments before appellate courts.

The short-term goals of the Task Force are these:

1. To gather information from sources in Canada and the United States which addresses the need for technological and case management changes in the court systems of both nations, particularly (but not exclusively) those created after January 1, 2020 (before we became aware that the Pandemic had invaded either country) and related to the discovery and trial aspects of criminal and civil cases and oral arguments in the appellate courts.
2. To gather information on "best practices" and new rules created by courts or interested groups from both countries to address the court administration issues caused or made evident by the Pandemic, particularly with regard to the discovery and trial aspects of criminal and civil cases and oral arguments in appellate courts.
3. Make a report to the Executive Committee about the Task Force's findings and a recommendation of what further role, if any, the College should play on these subjects in the future.