



# COURT MODERNIZATION

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Reforms made during the COVID-19 pandemic included the capacity and use of virtual courtrooms and digital filing of court documents. While these were introduced to react to a crisis, several can continue to be used to simplify and speed up dated legal processes. For example, the KB Digital Justice Filing Service simplified and clarified many of the issues that arose from email filing and has allowed for easier filing for a vast array of documents while simultaneously reducing the cost. Additional functionality might allow for the ability to perform searches and obtain copies of filed documents, access public information faster, expand to Alberta Court of Justice filings, and potentially open the system to non-lawyers, similar to what has been done in British Columbia.

CBA Alberta recommends continued or increased use of such innovations as Online Applications, Desk Applications, the KB Digital Justice Filing Service, and the ongoing flexibility to allow individuals to more simply represent their interests in a streamlined, cost-effective and modern manner.



**MODERNIZING MEANS INNOVATING TO BETTER MEET THE NEEDS OF THOSE SEEKING JUSTICE.**

## BACKGROUND

Alberta's justice system has not kept pace with the trends of modern society and actively resists innovation.

This is generally not a problem for large corporations and wealthy people who can afford to pay for inefficient legal services and processes. However, the reality for many Albertans is a complicated system, with struggles to access and use it in timely ways.

### **A new vision is needed.**

Reforms made through the COVID-19 pandemic have included the capacity and use of virtual courtrooms and digital filing of court documents. These were introduced to react to a crisis, not to respond to other harsh realities or anticipate future needs. Though Alberta is not alone, it has notably lagged behind other provinces.



# THE ISSUES

## THE CHALLENGE: COURTS ARE WOEFULLY OUTDATED, UNDERFUNDED, AND UNCREATIVE

- The challenge is one of will, imagination, resources, inertia, bureaucracy.
- Judges are not well supported in innovation: they do not have access to cutting edge technology and often still rely on old school thinking.
- Establishment: decisions are made more from the consideration of judges' (or staff/ clerks') convenience rather than litigants' ease of access (e.g. printing briefs for the court).
- Inertia: we have always done it this way.
- Funding model exacerbates the problem by making people reluctant to try new things.
- Neither government nor courts have a vision. CBA Alberta presents a vision in hopes of engendering enthusiasm.

## THE OPPORTUNITIES: RECENT INNOVATIONS

- Maintain some ability to do online applications.
- Desk applications availability.
- Online filing/search/download requests.



## An example of the application of modern technology

Andrea is owed \$75,000 by Bob.

Andrea (either directly or through her lawyer Carol) initiates an online claim. The claim is not a PDF “statement of claim”; rather, the online court form requires the claimant to fill in the party names and contact information, as well as selecting from drop-down menus the information that the court will require to direct the claim to the proper resources.

Andrea receives an action number, a portal to log into the court matter and see all filed documents and correspondence.

The court system sends Bob an e-mail advising him that he has been sued, and asks whether he wants to defend or issue a counterclaim.

Upon receipt of application: The docket needs to be triaged by the court in a directional manner, and perhaps with a determination of whether a judge is even needed.

## GETTING TO GREATER COURT MODERNIZATION

Key questions that need to be asked at this time:

- What are the goals of our justice system?
- What are the costs of not having a forward vision?
- What resources will be needed?
- Why do we observe resistance to change within the legal profession and among the judiciary?

Similarly, new trends and developments that need to be understood and embraced:

- We are connected online more than ever before.
- Many of us walk around with powerful computers in our pockets.
- We are not a paper-based society anymore.
- Law and information is no longer just in lawyers’ offices.
- The use and location of courthouses favours inefficiencies.

The use of some modest proposals and case studies illustrate the scope of the problem and the opportunities available now to tailor-make our justice system to achieve better and speedier outcomes, with less waste, dissatisfaction, and outright injustice.

**While the COVID-19 pandemic caused a great deal of turmoil for the judicial system in Alberta, it also shone a light on some of the innovative steps that could increase Albertans' access to justice.**

Through the adoption of these innovations, aside from the delays inherent in operating in a pandemic, more Albertans were able to access the courts with lower costs (both financial and in terms of lost hours of work) than before.

The steps taken to adapt the courts during the past few years have resulted in a modernization that now, post pandemic, should be further developed to prevent the courts from regressing to prior outdated methods of service.

## RECOMMENDATIONS

### 1. ONLINE APPLICATIONS

Certain matters should be heard in person before a trier of fact. However, with increased access to technology, the ability to proceed with virtual procedural chambers applications – in both the Alberta Court of Justice and the Court of King's Bench – will increase access to justice while lowering the costs of such access for Albertans.

Typically, to appear in chambers requires a lawyer, or a self-represented litigant, to be physically present in the courtroom from 9:45 a.m. until their matter is heard. Through the use of virtual platforms for these applications, lawyers are not required to charge their client for the wasted time of sitting in the courtroom waiting to be called as, unlike in the courtroom, the lawyer can attend to other matters.

Similarly, for both lawyers and self-represented individuals, particularly those who live far away from a judicial centre, they will not be required to travel long distances to attend what could be a 5 – 10 minute application.

Through the use of a consistent secure virtual platform, with clear protocols for use, continuing with a dedicated online chambers option will increase the access to justice, while reducing the costs associated with same.

## 2. DESK APPLICATIONS

In 2010, the Rules of Court re-introduced the concept of desk applications. However, following the COVID-19 pandemic, the use of this rule has been suspended due to a lack of court resources. The benefit of desk applications is that, for simple matters that do not need much in terms of supporting materials, there was a streamlined and minimally invasive method for obtaining a determination of procedural issues.

Given the cost effectiveness of this process for straightforward matters, it is recommended that the desk application process be made available for certain *ex parte* matters, with hard limits on the length of submissions, and a dedicated Applications Judge who is responsible for attending to these matters in a timely manner.

Desk applications, coupled with the already prepared court approved templates, will increase Albertans' access to justice while reducing costs to the users of the civil judicial process.

## 3. KB DIGITAL FILING

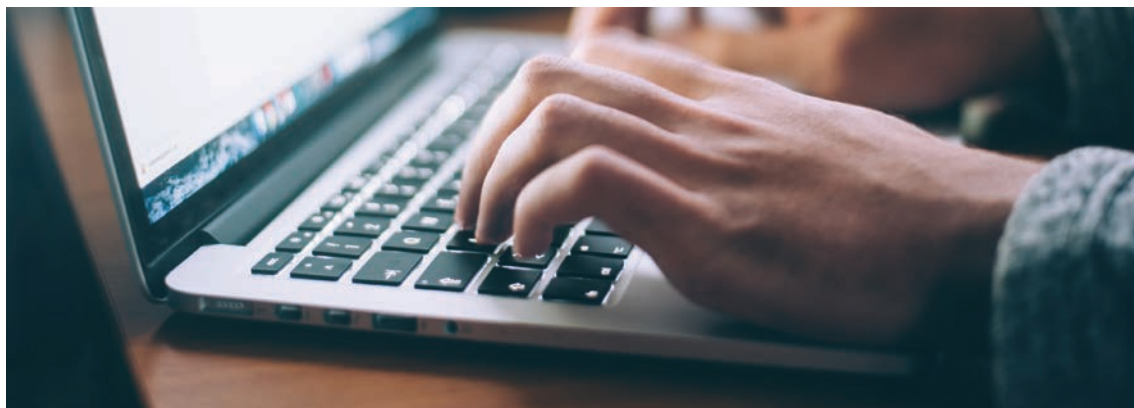
One of the most significant improvements to the court process has been the launch of the KB Digital Justice Filing Service.

This has simplified and clarified many of the issues that arose from email filing and has allowed for an easier mechanism for filing a vast array of documents while simultaneously reducing the cost of same.

Additional functionality of this system, such as including the ability to perform searches and obtain copies of filed documents, would provide additional benefits in that the access to this public information would be faster and the court clerks would be freed to engage in other tasks.

Additionally, expanding this system to allow for Alberta Court of Justice filings will allow for a more comprehensive and consistent process.

Finally, opening access to the system to non-lawyers, similar to what has been done in British Columbia, will allow greater access to justice as the hurdle of needing to travel to the court to file a document will be eliminated.



## 4. FLEXIBILITY

The Alberta Court of Justice is equipped to handle these matters with sufficient flexibility that individuals may represent their own interests in a streamlined, cost effective process.

Similarly, by allocating more resources to the Alberta Court of Justice, this may alleviate some of the burdens being faced by the Court of King's Bench which in turn, will increase the access to justice for Albertans.

## 5. COURTHOUSE FACILITIES AND ACCESSIBILITY

While the Canadian Bar Association's No Turning Back Report strongly supported the continuation of remote proceedings as an option and highlighted the need for digitization of court processes, courthouses remain an important component of a well-functioning justice system.

Power outages commencing in January 2023 at the Edmonton courthouse serve as a reminder that investment in facilities is critical to access to justice for Albertans.

Investment in a modern justice system should also consider questions of accessibility and how design can better accommodate those with special needs or health limitations. As a bare minimum, participants should be able to easily access accommodations information, and the process for obtaining those accommodations should similarly be clear and easily accessible.

