

# **Nova Scotia:** What we heard Nova Scotia Courts 2022

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2022

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## Context

# The digital task force

The pandemic has accelerated Nova Scotia Courts' pathways towards the digital transformation of their services. As highlighted in a January 2021 [press release](#) from the Department of Justice and Nova Scotia Judiciary, a task force will explore more ways to use digital ways of working to improve access to justice, increase efficiencies and create better outcomes.

### **What is 'Digital'?**

Applying the culture, processes, business models and technologies of the internet era to respond to people's raised expectations.

*Tom Loosemore, Partner at Public Digital, 28 Jun 2017*

Source: [Definition of Digital](#)

In June 2021, [Public Digital](#) was commissioned by the Digital Task Force to outline a vision for digital transformation of Nova Scotia Courts. Its main focus was on the following principles outlined by the Task Force:

- Improve access to justice
- Increase simplicity and efficiency
- Improve outcomes for citizens
- Maintain trust and confidence in the court system

### **What is the Digital Task Force?**

The Digital Task Force is constituted of a group of leaders co-chaired by Michael J. Wood, Chief Justice of Nova Scotia, and Candace L. Thomas, Deputy Minister of Justice and Deputy Attorney General. **Their main goal is to create a roadmap to digitally transform the courts of Nova Scotia.**

Other members of the Task Force include:

- Associate Chief Justice Patrick J. Duncan, Supreme Court (General Division)
- Associate Chief Justice Lawrence I. O’Neil, Supreme Court (Family Division)
- Chief Judge Pamela S. Williams, Provincial and Family Courts of Nova Scotia
- Natasha Clarke, Associate Deputy Minister and Chief Digital Officer, Service Nova Scotia and Internal Services
- Lawyers Agnes E. MacNeil, Paul Saunders and Anna Manley

Source: [Work Underway to Transform the Courts](#)

The following constitutes the main observations made by Public Digital and brought forth by the research driven by this project.

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# Methodology and scope

In this project, we have sought to:

- Understand where the court system is under pressure in its current state
- Consider how the court system provides clear, user-centered guidance to minimize misunderstanding for those considering, preparing for, or attending court.
- Evaluate the role of electronic filing and document management systems
- Evaluate the role of new, virtual, and remote means of attending court
- Consider how the court system must respond to the need for greater access to and leveraging of information.

Our methodology was to first understand digital in the Nova Scotian justice system - centered on courts - through exploratory interviews.

The steps we took were as follows:

1. Conducted 15 exploratory interviews with representatives of key areas in the courts system such as members of the judiciary, representatives of the court administration and representatives of the local legal services industry. The main three questions asked during the interviews were:
  - What is your role within the courts system, and how does digital\* play a part in this?
  - What are the challenges you've observed around digital\* in the court system - both in terms of day-to-day operation of courts, but also barriers to change?
  - What opportunities do you think there are through the digital\* transformation of the court system?
  - *\*In asking these questions, if necessary, we'd clarify digital to mean "applying the culture, processes, business models and technologies of the internet era to respond to people's raised expectations"*
2. Incorporated the findings of parallel research conducted by lawyer focus groups (e.g. Public Prosecution and Legal Aid).
3. Facilitated workshops on a roadmap for change.

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# Observations

## ***1. Leadership and identity***

Working with leaders in the Digital Task Force, and interviewing leaders beyond its membership, we encountered a consistent appetite for change. There is an appetite to achieve efficiencies and use of modern technology, but also an appetite to address large, systemic challenges such as access to justice.

We heard examples of innovation and personal sacrifice at the height of the pandemic that have helped make courts work in the face of crisis. This unique period has given public servants periods of renewed energy, renewed sense of purpose and a clear desire that this appetite for change is not lost, but built upon.

We observed a focus on smaller, more specific topics over vision and strategy. This was understandable at the height of the pandemic when reactive leadership was vital. At other times, this could be an indication that the urgent is consistently prioritized over the important (using the language of the [Eisenhower matrix](#)).

***“As a practitioner and also a digital advocate... there needs to be a commitment to the major change, this should not be a series of half measures... we need to have a plan, a mental transformation that can be generational, and we just need to commit the resources to that end.***

***We need to do it as quickly as possible but we need to be as complete as possible too.”***

The court system is understood to be a set of distinct parts with distinct identities: e.g. judiciary, court administration, law firms. The Task Force itself is an opportunity to move past these distinctions, so effort is being made in this area.

## ***2. Technology, consistency, and the use of data***

We heard a broad range of attitudes and approaches to the use of technology in courts. We heard arguments of the risks of using technology, and descriptions of the positive potential for technology.

The use of outdated technology is a significant, and growing problem, but also one which is very common - the same patterns of '[toxic technology](#)' are visible in courts globally.

We observed a number of symptoms of this outdated technology:

- Systems are 'fragile' and there is a fear around making changes
- Systems are costly and time consuming to make even small changes
- Systems don't keep pace with change - e.g. databases not able to record new information about the characteristics of remote/virtual/eCourts
- System scope isn't growing naturally to meet changing expectations and evolving technology. Processes are left to run on paper many years after it would've been possible to do so electronically

- IT help desks are slow to respond to anything outside routine requests.

We observed consistent reference to 'e' equivalents of existing processes (e.g. eWarrants, eDisclosure, eFiling, eCourts) - where technology mirrors existing manual processes. This framing is not limited to Nova Scotian courts, but it is also used by vendors and consultancies.

***“I would never expect the court to be digitizing every file, but if there was a practice, a standard saying that the files are to be digitized from now on and then there's appropriate safeguards in place, a way to access the file, I think would be tremendously useful.”***

***“One of the difficulties that we've encountered is we do not have a repository for keeping these documents that have been created electronically and so they end up being printed and attached to the paper files.”***

***“If you have to walk somewhere with anything [on paper], you've only gone half-way [to transforming].”***

We heard of projects to introduce new digital technology, for example eCourts and virtual courts. These seem to be vital new tools to allow



courts to operate during the pandemic, and despite being at an early stage of maturity, show promise for use far beyond the pandemic.

## **Data insight**

We heard that access to insightful data on court performance is often costly and time-consuming. Important quantitative questions can push the limits of what's possible to answer. For example “what proportion of court cases are unreasonably delayed?” requires consistent data, across many kinds of court, alongside a good consensus of “reasonable delay”.

# **3. Access to justice**

## **Cost**

This research has highlighted many issues that affect access to justice for Nova Scotians. These are a combination of factors, some of which are within the court's power to remedy; others are more complex and would require more far-reaching changes (across government and society).

The cost and time to Nova Scotians to be able to engage through digital channels:

- Some litigants are unable to afford mobile data or wired/WiFi internet access at home
- Some litigants have no access to their own digital devices

We heard about risky circumstances triggered by reduced access, such as litigants sharing legal & personal information via publicly available devices at libraries or community centers.

## Understanding the legal process

The legal process and everything that it entails can be very confusing for people who do not have legal expertise. Legal representatives, particularly those funded through Legal Aid, described these challenges in detail.

*Note: we spoke exclusively to people who worked closely with citizen users of courts, but did not hear from these people directly. Our findings may lack their voice, and upcoming work to hear from first voice/court users and staff will help address this.*

Understanding how justice and the courts work can be challenging on several fronts:

- Justice is not sufficiently 'human-centered' or 'lay-person-centered' and relies on a lot of court-centered processes that do not put the users of the court service first
  - There is generally a lack of understanding of how court processes work
  - The process seems daunting to many people
- “We hear from people that these processes were really daunting and didn't really take their needs into account.”***
- The lack of understanding and feeling involved leaves people with a sense of alienation

Our interviewees shared examples of the challenges citizens are facing. The following themes show that it can often be hard for Nova Scotians to know where to start when seeking justice:

- The process is not always well described
- There is confusion about what to do when, and where to seek help
- This can cause stress on top of a situation that may already involve significant trauma
- Where information is absent, confusing or misleading, this can lead to errors where people follow a path that is incorrect, risking the

ability to access justice at all (for example by running out of funds, missing vital deadlines, or not having their voice heard)

- An example is not providing a legal representative with the right information at the right time (due to lack of understanding, amongst other reasons) leaving the representative to make decisions on the citizen's part based on incomplete or out-of-date information.
- Where detail of a process is open to an individual judge or a court preference, differences can further exacerbate confusion (including amongst legal representatives)

## **Societal barriers**

There are barriers to accessing justice that reach beyond courts, but remain important considerations for increasing access. We heard that the justice system poorly serves underprivileged groups, such as African Nova Scotians, First Nation communities, people in rural areas, and persons with disabilities.

There are several reasons for this:

- Historical prejudice towards certain groups, specifically racism and the resulting inequalities.
- Low literacy preventing individuals from being able to access information, understand their rights, and begin a legal process.
- Low digital literacy.
- Poor internet access.
- To navigate the lack of simple and clear information, courts processes rely on additional support beyond government provision which isn't accessible to everyone - for example, advice from friends or family.

## **Appropriateness, solemnity & impact of remote interactions**

The court process can be unfamiliar and daunting to some of those involved. Many do not understand what is going to happen, what is required of them, or what chance they have of a positive outcome.

***“The clients who are coming into the justice system for the first time just don't fundamentally understand that there's a certain formality to the court, but there's also a certain seriousness for which you have to take the judge and sometimes that's difficult to communicate.”***

When they take part in court proceedings there are traditional norms of behavior, dress, court layout, procedure and language that feel very alien to those unfamiliar, and exacerbate the participant's feeling that they are not part of the process, but rather that it is being ‘done’ to them.

***“What we heard is that people were... feeling unheard so I keep thinking, moving to a digital space... how do you mitigate these feelings of alienation?”***

The rapid increase in video hearings and digital channels provoked by the pandemic has, in some cases, changed the behavior of participants as they are engaging. They carry on with ‘normal life’ rather than take time out to go to court, dress professionally, and face their

responsibilities in the presence of 'real' people. We heard fears that this represents the loss of the 'solemnity' of the court.

We heard of the value of seriousness of court proceedings expressed - being held to account, judged, and being expected to take responsibility for one's actions is important. Even a court participant's fear of this seriousness can encourage a negotiated resolution before the court session needs to take place.

We've heard about the effectiveness of telephone hearings where participants (for example an estranged couple) are more able to come to an agreement without the provocation of seeing each other in person or on a video screen.

Conversely, people spoke about 'faceless' interactions on the phone potentially creating more clinical decisions around life-changing situations such as child access.

***“My fundamental concern for both myself and my colleagues is that there is no face for a judge to look at which makes it very clinical... I think there's a significant access to justice issue when we are doing things like child protection matters, when people are looking into their children potentially going to be taken into permanent care... and the judge is not able to put a face to the name behind it.... so not having that I think has affected outcomes because it does make the judges be a little bit more clinical.”***

# 4. *Practical challenges*

We heard a range of practical challenges, which we have listed here to provide useful context:

- Physical access to courts and legal expertise is challenging for rural communities outside the regional centers. The time and cost of travel can be prohibitive and weather events can bring risk and unpredictability to journeys.
- Mobile data costs are higher than global averages, exacerbating problems of access to justice through digital channels. This [commercially funded analysis](#) ranks Canada 190th of 230 countries for mobile data costs.
- Nova Scotia's geography and topography leave large areas without mobile data coverage.
- Old and protected buildings are costly and very difficult to adapt for court proceedings (e.g. network cabling and WiFi).

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## What's next

It's important for the Task Force to continue exploring and understanding the current state of the courts system. To further their knowledge, the Task Force is seeking feedback from those who have experience with Nova Scotia's court system: members of the judiciary, court staff, lawyers and legal staff, and members of the public.

They aim to continue exploring the key questions conducted in this project:

- 1. What is your role within the court system (for example, court user, clerk, solicitor, judge)?*
- 2. Based on your experience, what do you feel is working well with respect to technology and digital ways of working in the court system?*
- 3. Based on your experience, what do you think is not working well with respect to technology and digital ways of working in the court system?*
- 4. What would you change in these areas if you could?*

We would like to make sure that we have heard from a variety of individuals with different backgrounds. We would appreciate you sharing this report and the survey link with colleagues, clients, or anyone else whose experiences you feel should be shared. The process of digital transformation will need to include every component of the Court system, and we welcome feedback from everyone in the groups listed above regardless of their level of expertise or legal knowledge.