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## Interview with the Chief Justice of Canada, the Rt. Hon. Richard Wagner

October 03, 2021 | The Rt.Hon Chief Justice of Canada, Richard Wagner

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### David Milosevic

Good morning, Mr. Chief Justice. Thank you very much for joining the Ontario Bar Association, Civil Litigation Executive this morning.

### Chief Justice Wagner

Good morning, David. It's my pleasure to be here.

### David Milosevic

Well, it's a great honour to have you here, sir. I want to discuss the theme of access to justice with you today. And before we go into some of the questions I was hoping, if you could tell our readers, why is access to justice an important goal for the civil justice system? And how would you explain what access to justice is?

### Chief Justice Wagner

Well, we've been talking about access to justice for quite a while now. I remember when I was the equivalent of the treasurer of the Bar in Montréal back in 2001, 2002 and we were talking about access to justice in those days. In those days only a few stakeholders were talking about access to justice. Now, I think everybody understands that there is, there was, and there is still a problem of access to justice. The other big difference is that now we're talking about *actions* for access to justice. That's why I'm so optimistic for the future, because everybody realizes that it is necessary to take action and tackle this issue.

### Chief Justice Wagner

So what do we mean by access to justice? It means many things. It means first of all, access to legal information because before going to court or to make a claim, or to defend a claim, you have to know about your rights. That's the first step - access to legal information. And that is why it's important, as a

first step, that people can have access to legal information and can also understand how the courts are working. It is also very difficult for somebody to have trust in something that you don't know.

Then you have to have access to the courts. You have to be able to afford to pay a lawyer. And so it brings into the question the threshold for legal aid, for instance.

### **Chief Justice Wagner**

So that's why it's the responsibility, not only for the government in terms of providing enough legal aid, but it's the responsibility also for the judges to explain in plain language, their decisions. It's the responsibility also of the bar associations, just like yours, to promote other ways to allow people to have access to legal information. So everybody has a role to play. There's no magic solution, but there are many types of solutions. And all together, that helps to address the challenge. I think we're in a better position today than a few years back, but there's a lot of work to be done for the future.

### **Chief Justice Wagner**

And you asked me the question, why is it so important? It is important because if people lose trust in the justice system, I call that *le début de la fin*, the beginning of the end. In other words, democracy will suffer because if people don't trust the courts. If they don't settle their disputes in the courts, they will settle their disputes on the streets, which could lead to problems with criminality, violence and so on and so forth. At the end of the day, it's democracy that will suffer.

### **David Milosevic**

That's very true Chief Justice. And when we look at the groups that may not have the kind of justice that we want, especially in the civil justice system, what kind of groups in your view, and especially you've been heading the Action Committee on Court Operations in Response to COVID 19, and we'll be heading into some of the questions about that, but as a more overarching issue, what kind of groups do you see are suffering from lack of access to the justice system?

### **Chief Justice Wagner**

As a first comment, I would say that everybody suffers from lack of access to justice, even people who can afford to pay a lawyer, because at the end of the day, like I mentioned, lack of access to justice will affect the strength of our democracy. So every citizen would suffer, but of course there are groups that suffer more from a lack of resources. And those are for instance, the Indigenous communities, women, people with mental health issues, for instance, those who cannot navigate in those waters. They are among the most vulnerable people. I think that they are the real victims of the lack of access to justice.

### **Chief Justice Wagner**

And I would think about the northern communities as well. For you and me, having Internet is a given. But for remote and northern communities, they don't have reliable and affordable Internet. They cannot have ready access to legal information. They cannot have access to the court virtually, like many had for the last year and a half. So those communities and their residents are the most vulnerable to the lack access to justice.

### **David Milosevic**

And for those communities, Chief Justice, if we look at now the real push toward court modernization that has been spurred by the response to the pandemic, for those communities, do you believe that the push toward modernization, electronic filing, remote hearings, that that is going to help or curb access to justice for these more historically marginalized groups?

**Chief Justice Wagner**

I would hope that this would help. This devastating crisis has had a profound effect on everyone in our society and it is not over yet. It has forced people to rethink the way they are operating, including the courts. Also, law firms, practitioners, bar associations have had to adapt. And I think there will be some lasting benefits coming out from this crisis. But when we talk about remote and northern communities, for instance, and people who do not have access to Internet, there is no real benefit for them because they cannot use the technology to exercise their rights. So that's why I think it's important for governments, for instance, to make sure that the technology can be accessible to everybody in Canada, in every region to have better access to justice. We also know the pandemic has had a disproportionate impact on marginalized people, such as those who participate in specialized court programs. Drug, mental health, domestic violence or Gladue courts depend on promoting trust, reinforcing progress and close monitoring of participants, which is more effective in person.

**David Milosevic**

And also it strikes me, Chief Justice, that modernization done right may also help with delays in the system. I was speaking to chief justice, Morawetz, here in Ontario, who was telling me about delays, and that the court was down about 30, 35% in 2020 in the number of matters they could hear. And that's created a backlog. And later on a few months ago, I was speaking to attorney general Downey here in Ontario, and he mentioned to me his vision for one day simple hearings being able to be conducted on a cell phone, you get the notification, you push the button, you appear on the phone, you're in front of a decision maker and that this could address backlog. What do you think of the possibility for modernization on that level to address backlog in the system? Is that realistic?

**Chief Justice Wagner**

It's a big challenge, for instance, with respect to jury trials in criminal matters. What this crisis brought is of course the necessity to find new ways to deliver justice, to deliver justice like we used to do. I think that judges and lawyers have adapted very well. And I'm optimistic for the future because of these actions. We used technology, to make sure that we could continue to support access to justice. We all try to find new ways to respond to the most urgent matters, be it in family matters or in criminal matters. In criminal cases, having a jury of 12 people in the room is quite a challenge and remains so. I'm very proud of how the judiciary sought to modernize – and quickly.

**Chief Justice Wagner**

I'm also very proud of the bar and its lawyers, because they felt and shared the responsibility of taking new actions. It's not easy to do. In doing that, of course, you have to realize that there are some limits and that's why everybody must contribute, including the government. I know for a fact that in some

provinces like Ontario, for instance, legal aid waived all financial criteria for victims of domestic violence. Alberta legal aid also has delivered special services during the pandemic. I think people are engaged, are committed.

In French we say, « La nécessité est la mère de l'invention. » Well, because of this crisis, we have had to find ways to reinvent ourselves. For instance at the Supreme Court we have modernized our rules of practice to facilitate the filing of leave applications. All our leave applications are now reviewed by judges electronically, whereas before a court attendant would come in with heavy trolleys of paper in each judge's office. It's a small example of an improvement that will stay in the future, beyond COVID-19

**David Milosevic**

And you've touched upon it already Chief Justice, the future of court modernization, what it might look like. For our members there's a keen interest in the issue of the future of oral hearing. Is there a continued place for in-person oral hearings? What's your opinion on that, sir?

**Chief Justice Wagner**

Well, there will always be a place for oral advocacy. Of course, the biggest challenge is for the trial courts and because of the nature of litigation, for instance, where all kinds of people have to come to court whether it be witnesses, experts, and so on. The jury trials are another example. At the appeal level, if we use technology, of course, we can make sure that we can provide an opportunity to make oral arguments virtually.

At the Supreme Court of Canada, as you may know we had the videoconferencing technology since the 1980s but only truly started using it during the pandemic, in order for attorneys to appear virtually with the judges who are sitting in the courtroom.

**Chief Justice Wagner**

So that will continue. Of course, I understand that a lawyer would appreciate coming to Ottawa and have their day in court and live the experience of arguing their case in the courtroom. But I think that technology facilitates things, and maybe the lawyers will have to discuss with their clients, to what extent they need really to travel to Ottawa to argue a case because appearing virtually can be very efficient.

**Chief Justice Wagner**

That said, at the appeal level, whether it be a Court of Appeal or the Supreme Court, oral hearings are important in terms of trust to ensure that people understand and appreciate that the court is engaged in the arguments. But appeals very much depend on good, efficient, written pleadings because that is where the case is made. Oral hearings very much serve to test what is in the facts, which help judges decide one way or the other.

So to answer your question, yes, oral hearings will continue, but maybe in a different way.

**David Milosevic**

And looking at this access to justice issue still, Chief Justice, I know that you have really taken a lead on access to justice and focused the bar on the importance of the issue. Your predecessor, Chief Justice McLachlin was also quite invested in the issue. What do you feel is the role of the Supreme Court of Canada and the Office of the Chief Justice in ensuring access to justice as the system undergoes this dramatic change?

**Chief Justice Wagner**

Well, I believe that the Supreme Court has a role to play, being the highest court of the land. And I have a role to play also as the Chief Justice. I'm not only the Chief Justice of the Supreme Court, but also I chair the Canadian Judicial Council, the CJC, and I also chair the NJI, the National Judicial Institute. And right at the beginning of this crisis, back in May of 2020, I decided together with the Minister of Justice Mr. Lametti, to set up a special committee to ensure that the justice system would still continue to work properly, despite the pandemic. The committee still meets every month with Chief Justices elsewhere in Canada, civil servants, experts and you have the attorneys general. Together we have issued national guidelines to facilitate court operations across Canada.

**Chief Justice Wagner**

And we exchange information. What is done in Nova Scotia, for instance, in Ontario and BC is shared with the action committee and it's very, very insightful. On the website of the federal judicial commissioner you can find everything that we've been doing over the last year. And we've decided to continue our work, even though the pandemic has taken a different direction, if I can use that word, because we want to take this opportunity to review what would be the best way to improve the justice system, even after the pandemic. And so we have all kinds of working groups that report to the main committee every month. I'm very optimistic about the lasting effects of these efforts.

**Chief Justice Wagner**

I can tell you that because of the action committee, amendments to legislation were made in criminal matters to facilitate, for instance, video appearance of people in criminal matters. So the work of the committee has led to concrete changes that impact the practice of law and access to justice in Canada. I'm very proud of that effort and that it will continue.

**David Milosevic**

And just to be clear for our readers, chief justice, this is the Action Committee on Court Operations in Response to Covid-19 that you're referring to?[1]

**Chief Justice Wagner**

That's correct.

**David Milosevic**

And we'll provide a link to our readers to the website that has the various action committee reports. They have excellent reports on access to justice in northern indigenous communities on responses to COVID and court operations. And so that is a resource that was initiated by the Office of the Chief Justice and by the Supreme Court.

**Chief Justice Wagner**

That's correct. Yes.

**David Milosevic**

Thank you, Chief Justice. And finally given all the work that the court has done, is there any advice you would give to our readers about how members of the bar can assist both in this modernization process and the very closely related issue of access to justice?

**Chief Justice Wagner**

As I mentioned before, I think that all the stakeholders in the justice system have a role to play. And particularly your members in Ontario, I think that you were always at the forefront of this battle to maintain access to justice. Your members supported the licensing and regulation of paralegals, for instance, that could give a hand and could give some advice and facilitate providing legal advice to citizens. And I think that the bar, your organization, your members could promote this practice elsewhere in Canada. So, to promote these new ways to facilitate access to justice. I urge the Ontario Bar Association to continue its work. It's very important.

**David Milosevic**

Very well, we appreciate that support Mr. Chief Justice. And I would like to thank you very much on behalf of the OBA Civil Litigation Section for taking this time to speak with us. And I wish you luck in the future of the committee and all the court's endeavors. Thank you very much, sir.

**Chief Justice Wagner**

Thank you very much. It was my pleasure. Good luck.

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[1] [Action Committee on Court Operations in Response to COVID-19 played a key role in maintaining safe court operations during the pandemic - Canada.ca](#)

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