



THE LAW COURTS
800 SMITHE STREET
VANCOUVER, B.C.
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Notice to the Profession, the Public and the Media

COVID-19: In Court Measures During the Pandemic

COVID-19 Notice No. 27

Date: **Revised September 1, 2020**

Highlighted changes:

- **Part II has been revised to address travel outside Canada.**

Supreme Court of British Columbia trials will resume on June 8, 2020 in a number of courthouse locations. Changes to court configurations and some in-court processes are required to comply with public health directives and orders regarding the COVID-19 pandemic.

The Provincial Government has retained the services of a private consultant to assist in identifying the necessary steps to modify courtrooms and courthouses to mitigate the risk of transmission of the virus. **Please refer to the Ministry of Attorney General's information about [COVID-19 Court Recovery Operations](#) summarizing the steps taken to ensure everyone's safety in courthouses and courtrooms, including the steps they are taking regarding the screening process for people entering courthouses, cleaning protocols, and physical distancing protocols inside the courthouse.**

Certain general precautions will apply to all in person court hearings, appearances and trials. Judges, masters and registrars have the discretion to direct more detailed precautions depending on the circumstances of a particular court hearing.

These measures are subject to change without notice as the Court receives further guidance and direction from public health authorities.

I. **Trial Management Conferences, Pre-Trial Conferences and Other Pre-hearing Conferences**

Counsel and self-represented parties at a trial management conference ("TMC"), a criminal pre-trial conference ("PTC") or any other type of pre-hearing conference are expected to confirm that the trial or hearing can proceed in accordance with the

precautions and restrictions set out below and to advise the presiding judge or master of any problems these measures may present. Any such problems should be addressed in advance of the trial or hearing. Counsel and self-represented parties will also need to address any additional concerns that may apply in the specific circumstances of their trial or hearing.

For civil or family trials, if counsel or self-represented parties are unprepared, the presiding judge or master may adjourn the trial and award costs against the unprepared party or litigant.

II. Addressing instances of symptomatic participants and travel outside Canada

Counsel and self represented parties must be in a position to confirm at the TMC, PTC, or other conference, at the opening of trial, and at the start of each day of the trial or at the start of any other in court appearance that to their knowledge, no one involved on their side (including counsel, the party, the accused or witnesses) has any symptoms of illness that may be related to COVID-19. The [BC Centre for Disease Control website](#) advises that the symptoms of COVID-19 can include the following:

- a. fever
- b. chills
- c. cough
- d. shortness of breath
- e. sore throat and painful swallowing
- f. stuffy or runny nose
- g. loss of sense of smell
- h. headache
- i. muscle aches
- j. fatigue
- k. loss of appetite
- l. less commonly, gastrointestinal symptoms like nausea, vomiting, or diarrhea.

Counsel and self represented parties must also be in a position to confirm that to their knowledge, no one involved on their side traveled outside Canada within 14 days of their anticipated in person appearance in a courtroom.

Following the TMC or PTC, during and after the trial and during and after any other in court appearance, if counsel and self-represented parties become aware that anyone who has been present in court has experienced any symptoms related to COVID-19 or that anyone has come into close contact with a person with a suspected or confirmed case of COVID-19 during the previous 14 days, they must notify the relevant public health officials and the local courthouse manager and follow any directions provided.

III. Witnesses

Prior to the TMC, PTC or other pre-hearing conference, counsel or parties must determine if any potential witness is reluctant to attend court due to health-related concerns or for other reasons related to the public health emergency. The court is unlikely to require the witness to attend in such circumstances, and the TMC, PTC or other pre-hearing conference will address the question of whether the witness can give evidence by other means, such as by affidavit or testimony by telephone or videoconferencing, etc.

IV. Masks and Protective Face Coverings

Members of the public and media are encouraged, but not required, to wear masks or protective face coverings when attending court hearings.

Participants at a court appearance, including counsel, parties and witnesses, are permitted to wear a mask or protective face covering in the courtroom if they wish to do so, subject to direction from the judge, master, or registrar if removal of a mask is necessary in order for the participant's evidence or submissions to be heard and understood. Participants should be aware that the judge, master, or registrar and the court clerk may or may not wear a mask in the courtroom.

Any concerns on the part of counsel, parties or witnesses regarding the use of masks in the courtroom should be raised for discussion at the TMC, PTC or other pre-hearing conference or with the presiding judge or master or registrar at the earliest opportunity.

V. Oaths or Affirmations

If a witness wishes to give evidence under oath rather than by affirmation, they must bring a Bible or other religious book or sacred object to court. There will be no Bibles or other religious books available in the courtroom.

VI. In Custody Accused Persons

Crown and defence counsel should be familiar with the current policy of BC Corrections concerning the attendance of detained accused persons in court and be prepared to discuss the considerations raised by the policy at the PTC.

VII. Exhibits, Documents, and Authorities

Counsel and self-represented parties must make every effort to limit documentary evidence and case authorities to those that are truly necessary. The court has always discouraged the practice of filing binders of documents as exhibits that counsel may not refer to or that are not entered into evidence; that practice is particularly discouraged in the current circumstances. For briefs of authorities, counsel should include only those cases to which they need to, and will, refer.

Civil and family hearings and trials

Counsel and self-represented parties should deliver copies of documents that they intend to enter as exhibits or rely on in cross-examination to other counsel/parties in advance, rather than simply passing them out in the courtroom. The same applies to common books of documents, written submissions, and briefs of authorities.

Criminal trials and extradition hearings

Crown counsel should deliver copies of documents that they intend to enter as exhibits to defence counsel in advance of the trial or extradition hearing, rather than simply passing them out in the courtroom. Defence counsel are encouraged to do so as well, if this will not impair the conduct of the defence case.

Movement of documents and exhibits in the courtroom where unavoidable

Where the passing of copies of documents or physical exhibits to others in the courtroom is unavoidable, counsel and self-represented parties must use the hand sanitizer available in the courtroom to sanitize their hands before and after handling the documents. In addition to hand sanitizer, there will be a supply of gloves in the courtroom for anyone who wishes to use them, as well as instructions for the safe use, removal, and disposal of gloves.

In order to maintain a safe physical distance between counsel, the court clerk, and the witness, documents and exhibits should be placed on the document table before the court clerk and the judge enter the courtroom. Where this is not possible or appropriate, at the time a document or exhibit is to be handed up, counsel or self-represented parties must place it on the document table and then return to counsel table at which point the court clerk will pick it up and hand it to the judge, master, registrar or witness.

VIII. Cleaning and Sanitation

The courtroom will be cleaned after each matter and at the end of each court day, including the witness box, accused box, counsel tables, court clerk desk, the judicial bench, public seating areas, and all other areas of the courtroom where people sit.

A courtroom attendant will wipe down the witness box, including the microphone, horizontal surfaces of the stand, armrests, and handrails after each witness finishes their testimony and at the end of each court day.

In order to facilitate the cleaning of counsel tables, the court requests that counsel who are appearing over multiple days on a particular matter remove their materials from the courtroom each night. If this is not possible or practical (e.g., because of the volume of materials), counsel should pack up their materials into boxes and store them underneath the counsel table.

For more information and details about cleaning protocols, please refer to the Ministry of Attorney General's information about [COVID-19 Court Recovery Operations](#).

IX. Courtroom Layout

The physical layout of the courtroom, including the position of counsel, the court clerk and the witness may be altered to maintain a safe physical distance between all participants. The ability to move within a particular courtroom, such as by approaching a witness, may be restricted for physical distancing purposes.

Communication between counsel and parties

Counsel must consider how they intend to confer with co-counsel and their clients in the courtroom while maintaining a safe physical distance.

Civil and family trials

Counsel should give notice at the TMC of an intention to seek leave of the trial judge to communicate with co-counsel or their client by text message or another method that would not normally be acceptable in court.

Criminal trials and extradition hearings

At the commencement of the trial or extradition hearing, defence counsel should be prepared to discuss with the trial judge the means by which they and their accused clients will communicate and confer with each other inside and outside the courtroom. There may be additional considerations where the accused is in custody.

Water

There will be no water jugs available in the courtroom during the court hearing. Counsel, parties and witnesses are permitted to bring their own water in clear plastic bottles that are no larger than 1 litre in volume. Sheriffs will provide water for an in-custody accused person.

Public and media

In order to maintain a safe physical distance in the public gallery between members of the media and public, the number of seats available will be reduced. If counsel or a party is aware of anyone who intends to observe all or part of the court hearing, they should advise those individuals that while the court remains open to the public, seating is limited, and entry into the courtroom will not be permitted once the room capacity is reached.

THE FOREGOING IS SUBJECT TO CHANGE. ANY UPDATED DIRECTIONS WILL BE POSTED ON THE COURT'S WEBSITE.

Dated 5 June 2020, at Vancouver, British Columbia

By Direction of Chief Justice Christopher E. Hinkson
Supreme Court of British Columbia