



THE LAW COURTS  
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VANCOUVER, B.C.  
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## **Notice to the Profession, the Public and the Media Regarding Criminal Proceedings**

### **COVID-19: Criminal Jury Trials Resuming September 8, 2020**

*COVID-19 Notice No. 38*

**Date: July 17, 2020**

Effective March 19, 2020, Chief Justice Hinkson suspended regular operations of the Supreme Court of British Columbia at all of its locations to protect the health and safety of court users and to help contain the spread of COVID-19. Essential and urgent matters continued to be heard, mostly by telephone or video appearance. Hearings of additional matters resumed as the circumstances permitted, with the gradual lifting of some public health restrictions and the implementation of health and safety measures in court facilities. Jury selections (and therefore most jury trials) remained cancelled up to and including September 7, 2020.

The Court will resume criminal jury selections and trials on September 8, 2020. The Court, the BC Sheriff Services, and the Minister of Attorney General's Court Services Branch, working together, have developed a plan for managing the particular challenges posed by jury selections and trials that reflects public health guidelines and the requirements of the law.

Counsel and parties with criminal jury trials scheduled for jury selection and trial on or after September 8, 2020 should expect the trial to proceed as scheduled, except as set out below.

#### **THE LOCATION OF THE TRIAL**

The Attorney General's Court Services Branch has assessed court facilities throughout the province to ensure they meet the health and safety requirements established by public health authorities. Health and safety protocols have been created and courtrooms are being modified where necessary. For the 25 courthouses in which the Court has criminal jury courtrooms, particular attention has been given to whether physical distancing can be maintained between jurors (as well as for others present in the courtroom, such as participants in the trial process, and observers in the public gallery) during the jury selection process, the trial itself, and the jury's deliberation process at the end of the trial.

Where possible, jury courtrooms will be reconfigured or modified to increase the distance between jurors (and from other individuals) in courtrooms. Where physical distancing cannot be maintained, plexiglass barriers will be installed or other appropriate measures taken. Where courtroom facilities can be made suitable, the trial will take place in the courthouse where it is scheduled to take place.

Jurors may be asked to wear face shields and/or masks to provide additional protection to themselves and others. Individuals with concerns about doing so will be invited, at the jury selection process, to ask to be excused from serving.

Some courthouses (mainly very small courthouses) cannot accommodate jury trials in conformity with public health guidelines and cannot be suitably modified. Criminal jury trials scheduled in those locations may be held offsite in places such as community centres or hotels, or may be moved to another court location within the same judicial district. If such a move raises concerns for the accused person, counsel, witnesses, or other participants, the Court will consider whether, on balance, the trial should proceed in the new location or be adjourned until circumstances change sufficiently to allow it to proceed safely in the original location.

If the only suitable alternative location is outside the judicial district in which the trial is scheduled to take place, a change of venue application may be necessary.

Decisions about the location of the trial must also take account of local community interest. If it is necessary to move a trial to a distant court location, efforts will be made to provide a video link from the trial proceedings to suitable facilities in the original location of the trial.

## **THE JURY SELECTION PROCESS**

Subject to the discretion of the presiding judge, the jury selection will generally proceed in two stages, on two separate dates, in order to limit the number of people attending at the same time.

The jury panel will consist of those jurors who have received juror summonses and who have responded to confirm that they will attend (e.g. who have not indicated in their response that they are disqualified from serving, or who have not been excused in advance for a compelling reason).

### **Stage 1: Drawing the Cards**

Stage 1 of the jury selection process will take place in court with counsel and the accused person present, approximately two days before stage 2. In order to reduce the number of people present, the jury panel will not attend stage 1.

At stage 1, the court clerk will draw, one by one in a random selection, cards with the juror numbers of all of the members of the jury panel, and the numbers will be recorded in the sequence that they are drawn.

The jury selection will then be adjourned to the selection date (stage 2).

## Stage 2: Individual Jury Panelists are Challenged, Excused, Stood By, or Sworn/Affirmed as Jurors

Following stage 1 and before stage 2, the members of the jury panel will be assigned to groups of approximately 15 according to the order in which their numbers were drawn at stage 1. Members of the jury panel will be advised of the time at which their group is to attend for the stage 2 court appearance. Attendance times for groups of jury panelists will be staggered throughout the day, and will maintain the numerical sequence resulting from the stage 1 random selection.

The stage 2 process will generally take place on a Saturday so that as few people as possible are present in the place of the jury selection, except those involved in or affected by it.

At stage 2, counsel and the accused person will be present. The members of the jury panel will attend in groups at their staggered times. The judge, who will be the same judge as presided at the stage 1 random selection, will make opening remarks to the first group of jurors. Then members of the first group will be re-called in the order resulting from the stage 1 random selection, and will be challenged, excused, stood by, or sworn or affirmed as jurors. The process (including the judge's opening remarks) will repeat with the second group, and so forth, until the jury and any alternate jurors are selected.

Unless otherwise directed, jurors who are sworn or affirmed will be permitted to leave the courthouse (or other jury selection location), after receiving appropriate instructions from the judge, while the jury selection continues. This is to reduce the number of people in the courtroom, and because the selection may be lengthier than usual.

Depending on the available court facilities and whether they allow for physical distancing, the stage 2 process may take place in a courthouse, an offsite location (such as a community centre or hotel), or a combination of courthouse and offsite facilities. In many locations, it will be necessary for the members of a juror group to wait in a separate room from where the proceedings are taking place until they are re-called. If so, a two-way video link will be set up between the judge, court clerk, counsel, and the accused person, on one hand, and the waiting juror group, on the other to allow the judge's opening remarks to be conveyed to the juror group and to allow counsel to see the jurors next to be called forward.

All jury selection locations will have been assessed in advance to ensure adherence to public health guidelines. Although measures will be in place for physical distancing, members of the panel will also be encouraged to bring and use a mask, or to make use of masks provided by the sheriffs. Hand sanitizer will be available, as will hand washing facilities.

The process outlined above differs in some ways from the usual jury selection process in British Columbia. It has been adapted in response to the public health guidelines regarding gatherings and physical distancing, while also preserving the essential aspects of a criminal jury selection, in order to allow criminal jury trials to proceed. The

process will involve more steps than the usual jury selection process, will take longer overall, and will demand more of the Court, its sheriffs and staff, and counsel and the accused person. However, the important rights and interests at play, enjoyed respectively by the accused person and the public, require best efforts on the part of all participants in the current exceptional circumstances.

#### Scheduled Jury Selection Dates Will Be Revised

The date originally scheduled for jury selection will need to be revised to accommodate the two-stage jury selection process. Also, it will not be possible to conduct two or more jury selections on the same date in one location, and some adjustments may be required for that reason. **Counsel should contact Supreme Court Scheduling for the court location of the trial approximately two months in advance, if revised jury selection dates have not been confirmed.**

#### **RAISING CONCERNS EARLY**

The Court recognizes the fundamental importance of jury trials to the criminal justice system in British Columbia and is committed to resuming criminal jury proceedings in a safe way as soon as possible. During the pandemic, and while public health measures remain in place, each jury trial proceeding will require extensive advance planning and additional work for all involved, including the Court, staff, sheriffs and counsel. Therefore, it must be stressed that if counsel or a self-represented accused person is aware of any reason why their jury trial may not be able to proceed as scheduled, this must be raised for discussion with the Court at the earliest opportunity. Please contact the Supreme Court Scheduling Manager responsible for the court location of the trial, and a pre-trial conference by telephone will be arranged if necessary.

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

Dated 17 July 2020, at Vancouver, British Columbia

By Direction of Associate Chief Justice Heather J. Holmes  
Supreme Court of British Columbia