



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Effective Date: 07 October 2020

NP 22

NOTICE TO THE PROFESSION AND PUBLIC

RESUMING IN-PERSON PROCEEDINGS DURING COVID-19: HEALTH AND SAFETY PROTOCOLS

Purpose

As described in [NP 19 Notice to the Profession and Public - COVID 19 Resumption of Court Operations](#), the Provincial Court is now hearing proceedings virtually and in-person throughout the Province. The Court remains mindful of the need to protect the health and safety of all court users and help contain the spread of COVID-19, while maintaining access to the Court. This Notice outlines the health and safety protocols that will be in place in the courtrooms. It is subject to amendment if there are changes in the COVID-19 situation in British Columbia. Judges, Judicial Justices, and Judicial Case Managers ("Judicial Officers") have the discretion to direct more detailed precautions depending on the circumstances of a particular court proceeding.

Summary

The health and safety protocols that will be implemented follow the [initial orienting principles](#) on safe and accessible courts approved by the [federal Action Committee](#) on Court Operations in Response to COVID-19, which say: "[The Public Health Agency of Canada] recommends employing a hierarchy of control measures, conceived of as a reverse pyramid, to effectively mitigate risk. This approach reflects the requirements of applicable federal, provincial, and territorial occupational health and safety legislation. Elimination of the hazard is the first control measure to be considered. Consequently, in the context of the COVID-19 pandemic, physical distancing is the foundation for any risk mitigation strategy. Additional elements can be introduced where physical distancing is impossible or insufficient."

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 [webpage](#) summarizing the steps Government has taken to ensure everyone's safety at all resumed in-person proceedings, including the steps they are taking regarding the verbal screening process with respect to COVID-19 for people entering courthouses, cleaning protocols, and social distancing protocols inside the courthouse.**

All persons attending courtrooms will be required to participate and cooperate to attain the recommended COVID-19 health and safety protocols. This includes practicing physical

distancing, sanitizing hands upon entry of a courthouse or courtroom, and adhering to all other recommended health and safety protocols and directions.

The Provincial Court will continue to assess the situation on an ongoing basis. We thank all of the stakeholders who have provided input and information regarding the resumption of in-person proceedings. We recognize managing the physical distancing and other health and safety protocols will take the effort and cooperation of all court participants and we thank you in advance for your patience and cooperation.

Notice

1. Addressing instances of symptomatic participants

Counsel and self represented parties must be in a position to confirm at the opening of a proceeding, and at the start of each day of the proceeding, 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.

During and after the proceeding, 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.

2. Witnesses

Prior to the proceeding, 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. If you become aware of this information in advance of the scheduled proceeding, parties should arrange to address the question of whether the witness can give evidence by other means, such as by affidavit or testimony by telephone or videoconferencing, etc. It will be up to parties (or their counsel) to make the necessary inquiries with Court Services Branch to ensure there are sufficient resources at the applicable court location for witnesses to appear remotely by video or audio conference, and to ensure that witnesses have the technology to appear remotely.

3. Courtroom Layout

The physical layout of the courtroom, including the position of counsel and the witness will be altered where possible to maintain a safe physical distance between all participants. Where physical distancing between all parties in the court can be achieved through the movement of furniture, plexiglass barriers will not be necessary. In areas where physical distancing cannot be maintained, barriers will be installed. The ability to move within the courtroom, such as by approaching a witness, will 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. Counsel should seek direction from the presiding Judicial Officer to communicate with co-counsel or their client by text message or another method that would not normally be acceptable in court.

Water

There will be no water jugs available in the courtroom during a proceeding. Counsel, parties, interpreters, and witnesses will be permitted to bring their own water in clear plastic bottles that are no larger than one litre in volume. Persons who bring their own water bottles should dispose of or remove them when leaving the courtroom. Sheriffs will provide water for in custody accused.

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 proceeding, 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 if the safe physical distancing requirements cannot be maintained.

4. Facial Masks and Coverings

Participants in a proceeding, including counsel, parties and witnesses, are encouraged and permitted to wear a mask or protective face covering in the courtroom if they wish to do so, subject to direction from the Judicial Officer, 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 Judicial Officer, the sheriff, and the court clerk may or may not wear a mask in the courtroom.

5. Oaths or Affirmations

All witnesses testifying in court will presumptively affirm.

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, and take the article with them when leaving court. There will be no Bibles or other religious books available in the courtroom.

6. Documents, Exhibits, and Authorities

Pre-trial conferences will include a discussion about measures that can be taken to reduce the number of physical exhibits entered, including a discussion around whether documents can be provided electronically.

Any party needing to handle an exhibit can use tissues provided and/or use hand sanitizer after handling the exhibit. Gloves may also be available in some locations.

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 may not be referred to in evidence; that practice is particularly discouraged in the current circumstances. For books of authorities, counsel should include only those cases to which they need to, and will, refer.

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 may 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 Judicial Officer 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 a

document table and then return to counsel table at which point the court clerk will pick it up and hand it to the Judicial Officer or witness.

7. Cleaning and Sanitation

Government has retained additional daytime cleaning services during this COVID-19 period to ensure that the high touch areas in courtrooms and courthouse are cleaned frequently.

The courtroom will be cleaned 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 porter will clean and disinfect all touchpoints after each user (witness, accused, counsel, party, clerk, and Judicial Officer).

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.

Hand sanitizer will be available at the judicial bench, counsel tables, the witness stand, and the clerk's desk. All people attending court will be expected to use hand sanitizer frequently and will be required to apply sanitizer upon their entry to the courtroom.

For more information and details about cleaning protocols, please refer to the Ministry of Attorney General's [webpage](#).

8. Steps being taken to reduce the number of people attending court

Provincial Court registries are accepting all filings at the [applicable court registry](#) either in-person or remotely (by mail, email, fax to fax filing registries under [GEN 01 Practice Direction](#), or using [Court Services Online](#) where available). To protect the health and safety of all court users and help contain the spread of COVID-19 while maintaining access to the Court, parties are encouraged to use remote filing options wherever possible.

Counsel attendance at court should be limited to those counsel who are appearing on a matter scheduled in court that day, where something substantive is happening. Counsel are encouraged to connect with witnesses and clients in advance of attending at the courthouse to ensure that the matter will proceed on the date scheduled, and that all of the court participants are not exhibiting any symptoms associated with COVID-19. If the matter will not be proceeding, please contact the Judicial Case Manager immediately to advise them. If the only purpose is to adjourn a matter to another date, neither counsel nor their client should attend court. Rather, in these circumstances, please see, for example:

- NP 19 Notice to the Profession and Public - COVID 19 Resumption of Court Operations;
- FAM 07 CFCSA Consent Requisitions;
- CRIM 13 Initial Appearance Court During COVID-19 (Consent Requisition form); and
- Small Claims - Consent to adjourn settlement conference form, Consent to adjourn trial conference form.

for the processes to adjourn matters remotely. Counsel are also encouraged to obtain a designation of counsel on all indictable offences.

The Judicial Case Manager's offices operate on a remote basis only at this time.

History of Notice to the Profession and Public

- Original Notice to the Profession and Public effective June 05, 2020.
- See also [NP 19 Notice to the Profession and Public - COVID 19](#).
- The Supreme Court of British Columbia's COVID-19 Notices and Announcements are posted [here](#).
- Amended Notice to Profession and Public effective on July 13, 2020 (housekeeping amendments consequential to [NP 19 COVID: Resumption of Court Operations](#) – July 13, 2020).
- Amended Notice to Profession and Public effective on September 15, 2020 (adds to para. 1 that counsel 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; and deletes last paragraph regarding unavailability of public listening stations).
- October 7, 2020 revised with housekeeping changes to remove historical dates.

Melissa Gillespie
Chief Judge
Provincial Court of British Columbia