



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR



GUIDELINES FOR RE-OPENING

June 23, 2020

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1. INTRODUCTION

In response to the public health emergency caused by the COVID-19 pandemic, the Supreme Court of Newfoundland and Labrador suspended its normal operations on March 18, 2020, permitting only urgent and emergency matters to proceed. Since that time, the Court has been analyzing ways of expanding its services, taking into account the recommendations of public health authorities. Further to this, on April 28, 2020, the Court expanded the types of documents that could be filed, began to deal with non-urgent proceedings that could be dealt with without an appearance, and began to hear specified family matters. The Court again expanded its operations on May 19, 2020, and began hearing a number of additional matters by teleconference and videoconference.

The Court remains committed to ensuring access to justice is maintained by continuing to expand its services in a manner that protects the health and safety of the public, staff members, judges and other stakeholders. To this end, the Court lays out the following plan for re-opening.

This plan was developed based upon the “COVID-19: Recommended Preventive Measures RESUMING COURT OPERATIONS IN WORK SITES” document produced by the Courts Administrative Services (CAS), dated May 28, 2020; the Government of Newfoundland and Labrador’s “Pandemic Recovery Readiness Guide”; and materials prepared by the Supreme Court of Nova Scotia. The Court wishes to acknowledge these sources which have been reproduced in part and adapted in this document.

1.1 Guiding Principles

The first guiding principle for the Court is that access to the courts must always be maintained. As noted by Chief Justice Dickson, in *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, “access to the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens”.

The second guiding principle is that the Court must remain “open” to the public and the media so that they can get access to information about ongoing court proceedings. The open court principle is one of the cornerstones of the Canadian justice system and it includes access to all aspects of the court process. This principle is enshrined in section 2(b) of the *Canadian Charter of Rights and Freedoms*.

The third guiding principle is that persons charged with an offence have a constitutional right to trial within a reasonable time. The Court must therefore strive to resume criminal trials, including jury trials, as soon as it is possible to do so in a safe manner.

The fourth guiding principle is that the health and safety of the public, parties, counsel, Court staff members and the judges is a top priority. This means giving due regard to the Chief Medical Officer’s *Special Measures Order* and the recommendations of public health authorities in order to minimize the risk of infection. This also means that, for the near future, it will not be business as usual.

2. IMPORTANT DATES

The following dates are tentatively set and are subject to change:

- In-person appearances may resume – July 2, 2020
- Registries re-open to the public – August 3, 2020
- Trials (judge alone/jury) resume – September 14, 2020

The dates are contingent upon the establishment of the measures discussed throughout this document. As a result, delays in establishing those measures will push back the above noted dates. The Court will provide timely updates should these dates need to be changed.

3. GENERAL MEASURES

Public health authorities have indicated that physical distancing, hand-washing/sanitizing, disinfecting high-touch surfaces and, where distancing cannot be maintained, the use of personal protective equipment (PPE) are important in minimizing the spread of COVID-19. Given this, the following measures will be required and implemented in all courthouses.

3.1 Distancing Measures

- All persons inside of courthouses will be asked to respect two-metre physical distancing while in the courthouse.
- Layouts for common areas, courtrooms, conference rooms and registries will support the required physical distancing where possible.
- Chairs in courtrooms, waiting areas and any other rooms must be appropriately distanced.
- Signage must be clearly displayed:
 - o Stating that individuals who know they are infected or are experiencing symptoms (even mild symptoms) must not enter the courthouse;
 - o Directing traffic flow and creating safe wait distances between individuals; and
 - o Stating the maximum capacity for courtrooms, conference rooms, waiting areas, elevators, washrooms, and any other rooms/areas.
- The number of employees allowed in the workspace must be managed to ensure physical distancing.

- Items that are commonly handled or shared (staplers, pens, etc.) should be removed from common areas.
- Photocopiers and fax machines should be used in a manner that respect physical distancing.
- Where feasible, employees should eat at their workstations or outside the courthouse.
- Water coolers should be removed from public areas and shared water jugs should not be provided. Bottled water will be provided to courtroom participants in judicial centres that have point-of-entry security screening.
- Sheriff's Officers must monitor public spaces and courtrooms to ensure that persons are maintaining adequate physical distance.
- Where physical distancing is not possible, other measures will apply as described elsewhere in this document.

3.2 Handwashing/Sanitizing

- Court facilities will be equipped with sanitizing products and sanitizing stations at the:
 - o entrance and exit of the courthouse;
 - o entrance of the security screening area;
 - o entrance and exit of each courtroom and conference room; and
 - o entrance of the elevators within courthouses.
- Clear signage must be posted about the courthouse stating that everyone entering the courthouse or a courtroom must use hand sanitizer when entering and exiting the courtrooms and registries.
- All persons will be required to sanitize their hands before entering/exiting the courthouse, courtrooms, and conference rooms. Sheriff's Officers will monitor compliance.
- All washrooms and kitchens must have signage posted regarding proper handwashing technique. Only disposable materials such as paper towels, etc. should be available for hand drying.

3.3 Cleaning and Disinfection

- Arrangements must be made to ensure:

- Courtrooms and conference rooms shall be disinfected before each new use, including:
 - the judges dais;
 - furniture and equipment used by Judicial staff;
 - furniture and equipment used by litigants and legal counsel including microphones;
 - furniture used by the public;
 - door handles, light switches, and any electrical door openers.
- Disinfection of high-touch surfaces in common areas will occur a minimum of two times per day, including:
 - door handles;
 - handrails; and
 - elevator buttons.
- Where more than one person will be using a particular work area in the same day, disinfection will be conducted after the first person departs, and before the next person is scheduled to arrive.
- Washrooms and kitchens will be disinfected at least two times per day.
- Court staff members and court users must be provided access to sanitary wipes or disinfectant sprays where possible, so they can wipe down surfaces before and after use, including chairs, desks, tables, keyboards, kitchen surfaces (fridges, microwaves, taps, countertops), and washroom surfaces (toilet seat, taps, countertops).
- Equipment such as photocopiers and fax machines must be wiped after each use.
- Where a suspected or confirmed case of COVID-19 is reported in a courthouse, operations on the floor in question, or a section of the floor will be suspended. Appropriate and thorough disinfection will be undertaken prior to re-occupancy.

3.4 Personal Protective Equipment

- Court attendees will be required to wear masks and gloves in all areas where the two-metre physical distancing cannot be maintained, for instance, at the security screening station.
- The Court will supply masks and gloves to court attendees. Persons wishing to wear their own mask will be encouraged to do so.

- Where court staff members are required to come into close contact (less than two meters) with individuals or to manipulate documents from external sources, they must take extra precautions, including the use of masks and gloves.
- Sheriff's Officers will be required to wear masks and gloves while in public areas and courtrooms.
- Employees must be provided instructions on the proper use of PPE prior to their use.
- Suitable containers will be in place at the exits from the courthouse to allow the appropriate disposal of used masks and gloves.

3.5 First Aid

- The Court must ensure the safety of employees who are required to interact with others during emergencies. These situations require that first aid responders come into close contact (less than two metres) with others.
- In this case, before starting a first aid intervention, employees who possess their first aid certification should be provided with the required PPE and wear:
 - o A surgical/procedure mask;
 - o Protective eyewear;
 - o Gloves; and,
 - o Shirt or gown that covers the arms (e.g. not short-sleeved).
- Note that these first aid interventions include CPR and the use of an automated external defibrillator (AED).
- Likewise, it is recommended that employees who provide first aid assistance self-monitor for symptoms and, if necessary, contact their supervisor if they are experiencing symptoms.

3.6 Occupational Health & Safety (OH&S)

- OH&S Committee will engage in weekly inspections of the courthouses to ensure compliance with these guidelines.

4. ENTERING THE COURTHOUSE

The following measures will apply where persons are entering the courthouse to attend at the registry or to participate in or attend a court proceeding.

4.1 Entering the Premises and Moving Through Common Areas

Sheriff's Officers are located in all seven Supreme Court Judicial Centres throughout the Province. Sheriff's Officers will monitor and facilitate the movement of persons through the common areas (hallways, robing rooms, etc.) and waiting areas to ensure that they maintain appropriate physical distance. Regardless if there is a formal Point of Entry (POE) screening process in place, Sheriff's Officers are responsible for the following:

- Ensuring those presenting at the Judicial Centre are required to attend Court at that time;
- Observing and enquiring of persons presenting at Judicial Centres regarding out-of-Province travel, symptoms, and so on, prior to allowing entry;
- Where applicable, maintaining secure entrance/exit and allow entry upon approval/request by Court staff;
- Directing persons attending Court regarding where they must wait for service, point out directional signage, indicate when Registry staff are ready to serve the next client (where possible);
- Monitoring the number of people in courtrooms and ensure that physical distancing is maintained at all times;
- Maintaining a count of the total number of persons in building and spaces at all times;
- Cleaning high-touch areas in and around POE;
- Monitoring interactions – when they are completed – to ensure clients exit courthouse immediately and through the proper exit; and
- Working with Court staff to identify and resolve gaps in process to ensure a safe environment for all those present.

4.2 Screening of Court Attendees and their Belongings

Sheriff's Officers will be present at all courthouse entrances and will screen all court attendees. Court attendees are reminded to:

- maintain the two-metre physical distancing during the screening process as well as wear a mask.
- only bring to the courthouse, those belongings that are necessary.

5. REGISTRIES

Staff members who work at the registry counter have close contact with members of the public on a day-to-day basis. As a result, the following additional measures and practices must be put in place in the Court's registries.

5.1 Registry Services

- Plexiglas barriers have been installed between the public and Court staff members at registry counters in all courthouses.
- Registry staff members will be provided with gloves for use when handling documents from external sources.
 - o Used gloves are to be discarded and hands washed or disinfected once manipulation of the documents received from external sources is completed and before returning to their work stations.
- The exchange of paper should be kept to a minimum. When paper documents are required:
 - o The documents should be placed on a clean surface for purposes of receipt and transfer while respecting the two-metre distance between individuals.
 - o Individuals will be urged to use their own pen; however, pens will be provided as necessary, for purposes of signing documents.
 - o After being handled, pens must be discarded or sanitized.
 - o Received documents should be placed and carried in an envelope or boxes.
- In situations involving payments at registry counters, employees should always:
 - o Maintain a two-metre distance with all individuals.
 - o Avoid all physical contact with individuals.
 - o Avoid hand-to-hand exchange of cash, bank cards or credit cards.
 - o Wear gloves when handling cash.
 - o Avoid touching bank or credit cards used by individuals, where possible.
 - o Encourage card payments, ideally using fixed payment terminals that do not need to be handled.

- Wash hands with soap and water or hand sanitizer after every commercial transaction.
- Disinfect all surfaces touched by the individuals (counter, payment terminal), and do so between every transaction.

Due to staffing levels and the extra-precautions required in dealing with documents, there may be delays in ordinary processing times.

5.2 Paper/Electronic filing

Effective June 8, 2020, the Supreme Court returned to its normal process for filing court documents. That means the Court will no longer accept emailed documents for filing; counsel and parties will be expected to file paper copies of documents with the Court by mail or in person (whether that be by dropping the documents in one of the drop-boxes located at all Judicial Centres or at the registry counter when they re-open). E-filing will still be permitted through the estates e-filing portal.

While the Court recognizes the obvious benefits of permitting broader e-filing (particularly during a situation such as this), the Court does not currently have an electronic document management system that can accommodate the storage of such filings. The Court will, however, continue to pursue solutions to provide for electronic filing in the future.

6. HEARINGS AND TRIALS

The Court is seeking to return to in-person proceedings as soon as possible. With that said, a number of measures, in addition to those mentioned above, will have to be in place in the courtroom to ensure the safe conduct of proceedings.

Please note that the Court's capacity will be diminished for a number of reasons. First, scheduling of matters will have to be coordinated so that physical distancing can be maintained in common areas and so that required disinfection can occur in between matters. Second, not all courtrooms will be able to be used, as they will not be able to accommodate the required physical distancing. Given this, the Court is encouraging counsel to proactively identify matters that might benefit from a settlement conference or resolution conference to assist in bringing the matter to a conclusion as well as matters that might be dealt with by way of remote appearance.

6.1 Remote Appearances

As noted above, the Court expanded the types of matters being heard by teleconference and videoconference on May 19, 2020. While the Court will endeavor to return to in-person hearings in most centres as of July 2, 2020, remote appearances will still be preferred for the following matters:

- Any appearance relating to scheduling;
- Case management appearances;
- Pre-trial conferences;
- Settlement conferences;
- Applications for judicial review; and
- Appeals.

6.2 In-Person Appearances

The following measures and considerations will apply to in-person court appearances. Please note that the resumption of in-person appearances will require flexibility and understanding on the part of parties, counsel, and other court attendees.

6.2.1 Entering and Exiting the Courtroom

- All persons will be required to sanitize their hands upon entering the courtroom.
- No bags other than briefcases and documents that lawyers or litigants require, and valuables that cannot be left outside the courtroom, will be allowed in the courtroom.
- Sheriff's Officers will enforce distancing practices in the flow and seating of Court attendees entering the courtroom.
- The layout of each courtroom will be assessed and modified to ensure proper physical distancing can be achieved between all necessary parties, Court staff, the judge and the public. Where it is not possible to maintain a distance of two-metres, Plexiglas dividers will be installed in advance in the least intrusive manner possible while ensuring adequate protection.
 - o The Court is undertaking a detailed assessment of every courtroom in the Province to determine what modifications are necessary for each space, from a physical distancing perspective, before they are deemed safe for in-person hearings.
- Wipes, hand sanitizer, gloves and masks will be provided at appropriate locations in and outside of the courtroom to ensure they are available for use as required.
- Court attendees will be permitted to wear their own masks.
- Access for the media and members of the public is described in Part 8 ("Public and Media Access to Courtrooms and Proceedings").

- At the close of the hearing and during recesses, the Court Officer or the Sheriff's Officer will invite court attendees to exit the courtroom in a manner that respects physical distancing.
- Suitable containers will be in place at the exits from courtrooms to allow the appropriate disposal of used masks and gloves.

6.2.2 During the Hearing/Trial

- Water pitchers and glasses will not be provided to attendees. Bottled water will be provided as required.
- Even though all measures are taken to ensure that the physical layout or use of dividers maintains the physical distancing, there may be circumstances during the hearing where this cannot be achieved. In these circumstances, judges, Court staff and court attendees must use the appropriate PPE (mask and gloves).
- Those involved in the transmission of documents in the courtroom will be required to wear gloves.
- To maintain social distancing during the transmission of exhibits or documents, a bin/or trolley will be used. Parties remitting such items will be invited to place them in the bin or trolley and return to their seat. The Court Officer will then retrieve the court documents or other exhibits.

6.2.3 Jury Trials

The Supreme Court has issued a Notice to the Profession and General Public indicating that jury trials will be postponed until at least September 2020. This is because the resumption of jury trials poses a number of challenges from a physical distancing perspective, owing to the number of persons that must be present during jury selection, during the trial, and in the jury deliberation room.

Courtrooms and jury rooms in each Judicial Centre are being carefully examined to determine whether they can be modified to comply with the preventive safety measures discussed in these guidelines.

Through this review, the Court has determined the General Division courthouse in St. John's will not, for the foreseeable future, be able to safely accommodate a jury trial without closing down significant portions of the building. This would mean that almost all other activities in the Court would have to cease for the duration of the trial, which would only further increase the Court's backlog. It is clear, therefore, that an alternative site for holding jury trials will be required.

The Court is currently making arrangements to have the hearing room utilized by the Commission of Inquiry Respecting Muskrat Falls modified for use as a jury courtroom.

The Court believes this is a suitable site. First, the size of the hearing room would be sufficient to ensure that adequate physical distance is maintained between the accused, counsel, the judge, the jurors, and the Court clerk. Second, the boardroom adjacent to the hearing room could, with minimal modification, serve as an appropriate jury room. The size of this room would enable jurors to deliberate while maintaining the required six feet of distance between them.

The Court is still exploring potential venues for jury selections.

7. ADDRESSING THE BACKLOG OF CASES

Across the Province, the Court has over 1000 appearances on its recovery docket and is actively working on rescheduling matters. Following the release of the Court's Notice to the Profession and General Public dated May 13, 2020, each Judicial Centre immediately began contacting counsel to set new dates for appearances that could be heard remotely.

Given the large number of matters to reschedule, this process will take some time. It is hoped, though, that the Court can recover all matters, other than trials, by September 2020. Here, "recovered" means that counsel have been contacted or a further appearance has been set in the matter.

This timeline is subject to change, as it is contingent upon a number of factors. The factors include, among others: the difficulty the Court faces in contacting counsel; the need to ensure that parties have sufficient time to prepare; the length of the matter to be recovered; the number of parties/participants involved; the inappropriateness of conducting some matters by remote appearance; and the availability of judicial and administrative resources.

The rescheduling of trial dates is underway. At this point, the Court is unable to provide specific or tentative dates for the recovery of trial dates.

Please note that if parties or counsel believe that a particular matter or trial could be heard by way of remote appearance, they are encouraged to contact the Court to discuss scheduling options.

8. PUBLIC AND MEDIA ACCESS TO COURTROOMS AND PROCEEDINGS

Pursuant to the Supreme Court's Notice to the Profession and General Public, issued May 13, 2020, the Court began conducting hearings by way of teleconference and videoconference. To ensure that the public and the media continued to have access to those proceedings, the Court issued a Notice on May 28, 2020, detailing how persons could virtually attend.

While the Court is looking to return to some in-person hearings beginning on July 2, 2020 it will still be necessary to limit the number of persons in the courtroom and courthouse at

one time. Given this, only participants to a proceeding, their representatives and a maximum of one support person per participant will be provided access until further notice. Members of the media will also be permitted access.

8.1 Attending Hearings and Trials Virtually

Given the limitations on the number of attendees, the Court will continue to facilitate virtual attendance of members of the media and the public. To find out what matters are proceeding and when, please consult the Court's docket posted on the Court's website:

https://court.nl.ca/supreme/general/court_docket.html

Any in-person appearances are indicated as such on the online docket; all other appearances are virtual. If you wish to virtually attend one of the matters listed on the docket, you must contact the Court's inquiries email address at least **48 hours** prior to the hearing of the matter in question:

| | |
|---------------------|--|
| St. John's | inquiries@supreme.court.nl.ca |
| Corner Brook | inquiryCB@supreme.court.nl.ca |
| Gander | inquiryGander@supreme.court.nl.ca |
| Grand Bank | inquiryGB@supreme.court.nl.ca |
| Grand Falls-Windsor | inquiryGFW@supreme.court.nl.ca |
| Happy Valley-GB | inquiryHVGB@supreme.court.nl.ca |

Requests should indicate the **file number**, **case name**, and **date** of the hearing you wish to attend. If the matter is one that the public would ordinarily be able to attend, you will be given a teleconference number so that you may call in to listen to the proceedings.

The Court will attempt to accommodate requests to attend made within the 48 hours prior to the hearing of the matter. Where these cannot be accommodated, the Court will provide a copy of the sound recording of the hearing at no cost to the requestor. Members of the public and the media can still make a request for a copy of the sound recording of a hearing after it has been held (assuming there was no restriction on public access to the hearing), subject to payment of the \$20 fee. Requests for copies of the sound recording should be made to IMDivision@supreme.court.nl.ca.

9. COMMUNICATION OF UPDATES

The Court will continue to update stakeholders regarding updates to the plan and any changes to proposed timelines. Communications will be made to its media contact list (please contact the Court if you wish to be added to this list), Twitter, the Court's website, and through the Law Society.