



June 19, 2020

NOTICE TO THE PROFESSION AND THE PUBLIC

Beginning July 6, 2020, the Territorial Court will resume hearing matters in-person in Whitehorse, as long as they are able to take place safely and in accordance with the protocols outlined below, based on the recommendations of the office of the Yukon's Chief Medical Officer. The re-opening of the court will take place on an incremental basis. In-person matters will be permitted so long as they are able to take place safely and in accordance with the protocols outlined below.

This notice updates the May 20, 2020 announcement regarding measures being taken by the Territorial Court to assist in containing the spread of COVID-19. As this situation evolves, we will continue to monitor and assess information. There may be amended Notices, or changes without advance notice, in response to any changes in the COVID-19 situation in the Yukon and guidance from the office of the Chief Medical Officer of Health. Please continue to monitor the Territorial Court Website, www.yukoncourts.ca, for updates or follow us on twitter at @YukonCourts.

I. PROTOCOL IN COURTROOMS

The following general precautions to ensure everyone's safety will apply to all in-person court hearings, appearances and trials. Judicial officers have the discretion to direct more detailed or different precautions depending on the circumstances of a particular court hearing.

We recognize that particular circumstances may require counsel, a party or a witness to be present only by video or phone, such as when travel to the Yukon is not possible, or self-isolation is required. The Court will continue to assess the feasibility of hearing matters partially in-person and partially by phone or video on a case by case basis, subject to *Criminal Code* requirements for criminal cases.

Screening Process for Persons Entering the Courtrooms

If you have any symptoms of illness that may be COVID-19, you should not come to the courthouse or courtrooms. However, if you are a party, an accused, or a witness whose presence is required in court, please ensure that you inform your counsel or the Trial



Coordinator of your health situation before the time of your scheduled court appearance.

The Government of Yukon website outlines the symptoms of COVID-19 as follows:

- cough;
- fever/chills;
- sore throat;
- difficulty breathing;
- headache;
- runny nose or nasal congestion;
- vomiting;
- diarrhea;
- fatigue; or
- muscle aches.

Counsel and self-represented parties may be asked to confirm at any in-person court appearance that to their knowledge, no one involved on their side, including witnesses and support persons, has any symptoms of illness that may be COVID-19, or has had contact with anyone who has symptoms that may be COVID-19.

The Sheriffs will screen people entering the courtrooms. If they observe anyone displaying symptoms that may be COVID-19, Sheriffs have the discretion to exclude observers from the courtroom, subject to the Judge's direction. Sheriffs and/or counsel will advise the Court of any court participants displaying such symptoms, at which time the Court will address the issue if necessary.

If during or after the proceedings, counsel, parties or participants become aware that they or someone they have been in contact within the previous 14 days have experienced symptoms related to COVID-19 they shall immediately notify public health officials and the Trial Coordinator and follow all directions provided.

Cleaning and Sanitation

Anyone entering the courthouse shall use hand sanitizer upon entry. Hand sanitizer will be available by the entrances and exits of the courthouse.

Anyone entering any courtroom shall use hand sanitizer again upon entry. Hand sanitizer will be available at the entrance to the courtroom, court clerk's desk, witness box, bench and counsel tables.

The gallery seats and surface areas, door handles, clerk's desk, witness box, witness chair, microphones, prisoner box, witness rooms, counsel table and chairs, bar and



swinging doorway in the bar, bench, shall be cleaned after each use. All courtrooms will be cleaned in their entirety at the end of each day.

If a witness swears an oath, the Bible or any other religious document will be disinfected after its use.

Courtroom Layout

Physical distancing measures among all people in the courtroom must be maintained. Each counsel will have their own podium at the respective ends of each counsel table. There will be stickers in the gallery seating to indicate where people must sit in order to maintain physical distancing.

There will be plexiglass installed around the witness box, in front of the clerks' desk, and at counsel podiums, recognizing that physical distancing may be difficult to be maintained in those areas at all times.

Brief adjournments will be granted to counsel during a hearing to communicate with their client or co-counsel outside the courtroom to accommodate physical distancing and confidentiality.

In the exceptional case that counsel needs to communicate with their client or co-counsel in the courtroom in a non-physically distancing manner, which is discouraged, each person will be required to complete a declaration form, available in the courtroom, indicating they are not experiencing any symptoms that may be COVID-19. The declaration forms shall be provided to the clerk for the file. The Judge may also request that people communicating in the courtroom in a non-physically distancing manner wear masks.

Numbers of People in the Courtroom

The need for physical distancing may mean, in some cases, that it will not be possible for everyone to be present in the courtroom, especially in the smaller courtrooms. Priority will be given to participants in the hearing, and support people including family, victim services workers, FASSY workers, mental wellness counsellors, and probation officers.

Members of the media and the public, as always, are permitted to attend court (except in family matters or in exceptional court-ordered circumstances). If there is insufficient space in the courtroom to accommodate everyone, a conference call number will be provided for the media and members of the general public to call in to hear the proceedings.



The Sheriffs have discretion to allow people into the courtroom on the basis of these priorities, subject to the Judge's direction.

Masks

At this stage masks are not required to be worn in the courtroom. Anyone may wear a mask, if they choose, with the exception of witnesses when they are giving evidence under oath or affirmation. The Judge may in their discretion ask court participants to wear masks, if circumstances require, such as where physical distancing is not being followed and there are no safety barriers to reduce possible transmission of the virus. Masks will be available in the courtrooms.

II. CRIMINAL MATTERS:

Pre-trial Conferences

Where all parties are represented by counsel, pre-trial and case management conferences shall continue to occur by phone unless otherwise requested by the parties.

If one or more party is self-represented, the Judge shall exercise their discretion in deciding whether to hold the conference in person or by telephone.

Trials/Preliminary Inquiries

As of July 6, 2020, in-person preliminary inquiries and trials will commence.

The Courts encourage counsel to contact witnesses or their client prior to the trial date to ensure that the matter will be proceeding. If the matter will not be proceeding, counsel shall notify the Trial Coordinator as soon as possible.

As is our practice, we encourage parties to work towards settlement wherever possible in as timely a fashion as possible. If parties believe that a case management conference would assist in resolving a matter, we encourage the parties to contact the Trial Coordinator to schedule one.

In-custody Accused

Unless otherwise ordered by the Court, in-custody accused will appear in person for substantive matters (e.g. trials, preliminary inquiries, and applications) where evidence is being called. For bail hearings, the process is set out below.



In-custody accused who are being sentenced may appear in person, or by video from the Whitehorse Correctional Centre.

Counsel will be permitted to meet with their clients in cells.

Bail Court

Accused persons appearing in bail court will continue to appear by video from the Whitehorse Correctional Centre unless counsel makes a request to the Senior Court Clerk in advance to have their client physically present, and that request is approved by the Court. Requests must be received before 10:00 a.m.

Counsel may attend court in person. We strongly encourage that defence counsel continue to have proposed sureties appear by phone.

Docket Courts/Youth Courts

Duty counsel should be present in person in the courtroom. Other counsel are encouraged to appear by phone, if the matter is not substantive in nature. It will continue to be the expectation that counsel will appear as agent for their client (summary conviction matters) or file a designation and appear on behalf of their client (indictable matters), unless the appearance is substantive in nature.

Community Wellness Court/Domestic Violence Treatment Option Court

The Court will proceed as scheduled with modifications as follows:

1. Requests for suitability assessments may be made in court or by way of a desk order. If by way of desk order, Crown will submit the order by email to Judges' Chambers including correspondence confirming consent from defence and Crown. The order will be signed and filed by the Court, and copied to the Justice Wellness Centre (JWC);
2. All first appearances will be adjourned to a date in the regular course in order to determine the direction the matter will be proceeding; and
3. For DVTO, unless otherwise determined by the Court, dockets will continue to be held by phone. Sentencings may be held in person or by phone.
4. For CWC, dockets will generally be held in Courtroom #5. Court check-ins may take place with client attendance by telephone, by video from the JWC meeting room, or in person. Where video or in-person check-ins are recommended, counsel and the Treatment Team will ensure the numbers of



video and in-person appearances allow for appropriate social distancing to be maintained. Accused will be expected to participate in their check-in via phone, videoconference or in person, unless there is a reasonable explanation why the accused is unable to participate. Unless otherwise ordered by the Court, sentencings will take place in person.

Circuit Courts

For the time being, the Court will not be travelling to communities outside of Whitehorse. The Courts are in the process of consulting with communities outside of Whitehorse in this regard.

III. CIVIL MATTERS

Any civil court matters in communities outside of Whitehorse will be dealt with by phone and/or video from Whitehorse.

Child Protection Court

Duty counsel should be present in person in the courtroom. The parties may appear in person or by phone. It would be beneficial for the Director to advise those being served with an application that they should consider contacting Legal Aid at 867-667-5210 ext. 1 or 1-800-661-0408 ext. 5210, and that, in any event, they should attend court in person.

Small Claims Court

Applications will be scheduled for July and August, and parties may seek direction from the Court to appear by phone. Trials will be scheduled for the Fall.

Pre-trial conferences will proceed by videoconference, unless otherwise directed by the Court. These conferences will be scheduled on a case by case basis at the direction of a judge.

IV. COURT REGISTRY

In-person Attendances and Filing

The public door into the Registry will continue to be locked but the Registry will accommodate in-person attendances, after July 6, 2020, as long as physical distancing



Territorial Court of Yukon

Announcement

measures are respected. Registry staff may refuse access to the Registry to anyone who does not comply with physical distancing requirements.

Email Filing

Email filing will not be permitted after July 6, 2020, unless there are exceptional circumstances related to the COVID-19 pandemic. The Court currently does not have an electronic filing system. The email filing that has been permitted over the last several months was a temporary measure to address the restrictions in place as a result of COVID-19. Unfortunately, it is impractical and time-consuming for Registry staff.

The Court recognizes the benefits and is supportive of implementing a proper electronic filing system in the future.

CHISHOLM, P.
CHIEF JUDGE OF THE
TERRITORIAL COURT OF YUKON