



**November 2, 2020**

## **NOTICE TO THE PROFESSION AND THE PUBLIC\***

The Territorial Court has resumed hearing matters in person in Whitehorse and all other communities, as long as they are able to take place safely and in accordance with the protocols outlined below, based on the recommendations of the Yukon's Chief Medical Officer.

This notice updates the June 19, 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](http://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 (a judge or justice of the peace) 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**

The Government of Yukon has developed the symptom traffic light checker for symptoms of COVID-19.

If you suffer from any pre-existing conditions, consider what are normal symptoms for you. If any of the following symptoms are usual symptoms of one of your pre-existing conditions, then you may not need to get tested or stay home.



The Yukon Government has categorized symptoms of COVID-19 as follows:

RED symptoms:

- Fever/chills
- Cough
- Shortness of breath or difficulty breathing
- Loss of taste or smell

YELLOW symptoms:

- Headache
- Runny nose or congestion
- Sore throat
- Acute/intense fatigue
- Generalized muscle aches (not related to physical exertion)
- Significant loss of appetite
- Nausea/vomiting
- Diarrhea

If you are experiencing one or more RED symptoms you should get tested. You may not return to the courthouse until you have received your test results or you have completed the required self-isolation period. If you choose not to get tested you shall not attend at the courthouse until you have self-isolated for 14 days from the beginning of your symptoms, even if the symptoms clear up before the 14 days have passed.

If you have two or more YELLOW symptoms that have lasted for more than 24 hours, the direction for RED symptoms will apply.

If you have only one YELLOW symptom, you shall not attend at the courthouse until that symptom has gone away, unless it is a runny nose or nasal congestion. With a runny nose or nasal congestion that lasts longer than 24 hours, is mild and is not getting worse, and you are otherwise well, you may attend the courthouse.

If you are experiencing mild symptoms, you still need to self-isolate at home, but you can do so for 24 hours to see if the symptoms improve or if new symptoms start.

You shall not attend at the courthouse if you have been in contact with someone who has COVID-19 or you have travelled outside of the Yukon bubble in the past 14 days.

If you are experiencing symptoms of COVID-19, as outlined above, and 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.

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 judicial officer'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 in Whitehorse or circuit courts in other communities 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 clerk shall have blank copies of the declaration form. Once the declaration form has been completed it shall be provided to the clerk. The judicial officer 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 judicial officer's direction.

## **Masks**

At this stage masks are generally not required to be worn in or outside of the courtroom, although there may be situations where the Court orders that individuals attending court wear masks upon entering the building and when in the courtroom gallery. Anyone may wear a mask, if they choose, with the exception of witnesses when they are giving evidence under oath or affirmation. The judicial officer 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**

In-person preliminary inquiries and trials have recommenced.

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 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**

All pre-circuit conferences will be held by teleconference.



Circuit travel has resumed. Attached as Appendix A is a copy of the Circuit Court Attendance Plan, approved by the Court.

### III. CIVIL MATTERS

#### **Child Protection Court**

Applications and trials have resumed in person in Whitehorse and the communities.

For docket matters in Whitehorse, 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 and trials have resumed in person in Whitehorse and the communities

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 Whitehorse Registry will continue to be locked but the Registry will accommodate in-person attendances as long as physical distancing measures are respected. Registry staff may refuse access to the Registry to anyone who does not comply with physical distancing requirements.

The Registries in Watson Lake and Dawson City are now open and are accommodating in-person attendances.

#### **Email Filing**

**Email filing is not permitted, 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



## Territorial Court of Yukon

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Announcement

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.

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

## Appendix A – Circuit Court Attendance Plan

### Circuit Court Attendance Plan

#### Community Attendance

The court will consult community leadership and consider their response prior to planning travel to the community. The court party will travel to a community only if the court is confident that requirements for health and safety can be met, which may include community assistance with the provision of custodial services in accordance with the court's directives and at the court's expense.

#### Travel

All travel will be conducted in accordance with the requirements of the Chief Medical Officer of Health, YG directives, and policies of the transporting agency.

##### Vehicle

Vehicle occupancy will be limited to four persons. Use of masks while in the vehicle is discretionary.

##### Airplane

Air travel will be conducted according to the policies of the transporting agency, currently Alkan Air – accessible at <https://alkanair.com/covid-19/>.

#### Venue Preparation

The venue manager will set up the venue in advance of the court party's arrival pursuant to the relevant contract for services and consistent with the Chief Medical Officer's direction regarding physical distancing and occupancy limits.

#### Venue Operation

The venue will be operated in accordance with the Chief Medical Officer's direction regarding physical distancing and occupancy limits and the direction of the court.

##### Signage

The Sheriff will post, or cause to be posted, signage in both English and French advising the public of the rules regarding access to the court venue. Signs will be posted inside and outside of the courtroom.

##### Courtroom Access

The Sheriff will screen court participants as they enter the courtroom and will deny entry to anyone showing or reporting any of the following symptoms: cough, fever/chills, sore throat, difficulty breathing, headache, runny nose or nasal congestion, vomiting, diarrhea, fatigue, muscle aches.

##### Physical Distancing and Occupancy Limits

The Sheriff will control access to the court venue and enforce social distancing in the court environment to the best of their ability considering their other court-related duties. All court participants will conduct themselves in accordance with the guidance of the Chief Medical Office of Health and will comply with the Sheriff's directions.

## Appendix A – Circuit Court Attendance Plan

### Custodial Services

The venue manager will assist with arranging a custodian to conduct supplementary cleaning of the courtroom pursuant to the general direction of the court or the specific direction of the presiding justice. The Sheriff will instruct the custodian regarding the surfaces to be cleaned at any given time. The venue operator will provide the general cleaning supplies used by the custodian. Court Services Branch will bear reasonable expenses for supplementary custodial services.

### Personal Protective Equipment

The Sheriff will provide disposable masks and gloves that may be issued to court participants upon request or at the direction of the court. Participants are required to wear masks if they cannot maintain the recommended physical distancing or separation with a barrier.

### Personal Cleaning Products

The Sheriff will provide hand sanitizer, sanitizing spray and/or sanitizing wipes for court participants. All participants are required to use hand sanitizer upon entering the court environment.

### Barriers

The Sheriff will provide portable clear barriers that can be used to separate court participants who cannot maintain the recommended physical distancing or wear a mask (e.g. while giving testimony).

### Declarations

The clerk will provide declarations forms for court participants who cannot maintain the recommended physical distancing (e.g. confidential counsel-clients conversations). Court participants in this situation must wear masks.