



SUPREME COURT OF YUKON

NOTICE TO PUBLIC AND TO PROFESSION

January 13, 2021

The Supreme Court has resumed hearing matters in-person 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 Chief Medical Officer of Health.

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 Yukon and guidance from the office of the Chief Medical Officer of Health. Please continue to monitor the Supreme 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. Judges 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 always to the requirements in criminal cases of the *Criminal Code*.

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 have mild symptoms, you still need to self-isolate at home, but you can do so for 24 hours to see if they get better or if new symptoms start.

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.

*Updates to the Notice of October 30, 2020, have been underlined for ease of reference.

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

RED symptoms:

- Fever/chills;
- Cough;
- Shortness of breath or difficulty breathing; and
- 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; and
- 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 a negative test result or you have completed the required self-isolation period. If you do not 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 it is recommended that you get tested. You shall not attend at the courthouse until the symptoms have gone away. One exception is if you have a runny nose/nasal congestion that lasts longer than 24 hours, is mild and is not getting worse, and you are otherwise well, you can attend at the courthouse.

You shall not attend at the courthouse if you have been in contact with someone who has COVID-19 or you have travelled outside out 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 Co-ordinator 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, as outlined above, 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 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 tables and chairs and bench, will 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 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 indicating where people must sit in order to maintain physical distancing.

There will be plexiglass installed around the witness box, in front of the clerk's desk, and available at counsel tables, 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, and where one of the two parties is unmasked, 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 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 or where there are statutory requirements). 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 Sheriff's office has discretion to allow people into the courtroom on the basis of these priorities, subject to the Judge's direction.

Masks

The Courts have implemented a new policy on mask-wearing in courtrooms and the courthouse, dated November 20, 2020. In general terms, the policy states that mask-wearing is mandatory within all areas of the courthouse and courtrooms, subject to certain exceptions, and in the courtroom at the discretion of the presiding judge. This new policy may be found on yukoncourts.ca, and is attached here for your reference as Appendix A.

II. CRIMINAL MATTERS

There will be no jury trials scheduled during the calendar year 2020. Jury trials are being scheduled in 2021.

Judge alone trials will proceed as long as the safety protocol described above is followed.

In-custody accused may continue to appear by video for short appearances, if desired, or as ordered by the Judge. Otherwise, they may appear in person, as long as the safety protocol described above is followed.

Criminal Chambers dates are posted on the Court website. (Please see Practice Direction Criminal-6).

Pre-trial conferences where all parties are represented by counsel shall continue to occur by phone unless otherwise requested by counsel.

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

III. FAMILY MATTERS

Family Chambers will occur on scheduled Tuesdays in **Courtroom 1** from 10:00 a.m. to 12:30 p.m. Dates will be posted on the Court website. Please ensure that matters scheduled on a Chambers day are 30 minutes or less in total, and are unlikely to be adjourned. If a matter is anticipated to take longer than 30 minutes, please contact the Clerk to schedule special time. If the matter is likely to be adjourned, please contact the Clerk to add the matter to the next Chambers day. (Please see Practice Direction Family-8).

Family Law Case Conferences and Judicial Settlement Conferences shall resume in person, as long as physical distancing can be maintained.

IV. CIVIL MATTERS

Civil Chambers will occur on scheduled Tuesdays at 3:00 p.m. Dates will be posted on the Court website. (Please see Practice Direction Civil-3).

Appearance Days will occur on scheduled Tuesdays at 4:00 p.m. Dates will be posted on the Court website.

Case Management Conferences where all parties are represented by counsel will continue to occur by phone unless otherwise requested by counsel.

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

Settlement Conferences will resume in person, as long as physical distancing can be maintained.

Applications or trials requiring in-person testimony will proceed as long as the safety protocol described above is followed.

V. 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 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.

Email Filing

Email filing is not be 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 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.

Service and Delivery

All documents are required to be served or delivered according to the *Rules of Court* of the Supreme Court. No email service is permitted unless it is done according to the *Rules of Court*.

Affidavits

The Order (Ministerial Order 2020/39) allowing for affidavits to be sworn or affirmed remotely has been repealed. Therefore, all affidavits shall be sworn or affirmed in accordance with ss. 59 and 60 of the *Yukon Evidence Act*, R.S.Y. 2012, c. 17; and Rule 49 of the *Rules of Court*, O.I.C. 2009/65.

Wills

The Order (Ministerial Order 2020/39) allowing for wills to be signed remotely has been repealed. Therefore, the requirements for execution, revocation, alteration and revival of a will must be signed in accordance with ss. 5, 10, 11 and 12 of the *Wills Act*, R.S.Y. 2002, c. 230.


Chief Justice S.M. Duncan

APPENDIX A

NOTICE TO PUBLIC AND PROFESSION – COVID-19 UPDATE New Policy on Mask-wearing in Courtrooms and Courthouse

November 20, 2020

Effective Monday, November 23, 2020 people attending the Law Courts Building in Whitehorse for court-related business are required to wear face masks. Everyone is encouraged to bring their own mask, but if you do not have one, a supply will be available in the atrium, or a Sheriff will provide one to you.

This policy applies to people in the entrances, atrium, Court Registry, restrooms, witness and interview rooms, Supreme Court boardroom, Territorial Court boardroom, main floor boardroom, law library, stairways, hallways, and elevators. This policy does not apply to employees of or visitors to the Government of Yukon coming in or out of the Law Courts Building for non-court-related business, as that is the responsibility of the Government of Yukon.

Everyone is required to wear masks in all the courtrooms at all times, with the exceptions set out below and subject to the presiding judge's discretion.

People sitting in the gallery of the courtrooms are required to wear masks at all times.

Counsel in the courtrooms are not required to wear masks when they are in front of the bar at counsel tables, or podiums but are required to wear them at all other times. If counsel wish for their client to sit beside them at counsel table, however, either they or their client or both will be required to wear a mask.

Witnesses are required to wear a mask at all times before and after their testimony, including while walking to the witness stand. Once the witness is in the witness stand, they are not required to wear a mask while testifying.

The presiding judges and other judicial officers in the courtrooms continue to have discretion on the wearing of masks based on the individual circumstances of each case, including the space in the courtroom, the nature of the case, and the parties and participants.

We emphasize that wearing a non-medical face mask is not a substitute for physical distancing and complying with other public health directives. Physical distancing remains the best protection against the transmission of the virus. Hand-washing, hand sanitizing, and staying at home when you have one or more symptoms in the red category or two or more symptoms in the yellow category (as described in our last updates dated October 30, 2020 and November 2, 2020) are also important ways to reduce transmission of COVID-19. Mask-wearing is an added protection.

This new policy is being put in place as a result of the recent increasing numbers of COVID-19 infections and potential exposures locally, across the country and in Alaska. It is consistent with the directives and recommendations of Yukon's Chief Medical Officer of Health.

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