



## In-trial Criminal Jury Proceedings

### **A Statement from the Action Committee**

*Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.*

The [Action Committee on Court Operations in Response to COVID-19](#) has released this Tip Sheet to help guide the safe resumption of court operations in Canada.

This Tip Sheet is informed by [Principles and Perspectives](#) drawn from health and safety experts, the judiciary, governments and courts administrators – each motivated by a shared responsibility to protect the health and safety of Canadians in planning for the resumption of in-court operations.

It applies a phased method of risk identification and risk mitigation recommended by the Public Health Agency of Canada, and previously released by the Action Committee in its [Orienting Principles on Safe and Accessible Courts](#). This involves surveying the various elements of court operations, identifying risks for COVID-19 transmission, and implementing mitigation strategies according to a hierarchy of controls. Physical distancing is the foundation for this hierarchy, followed by engineering controls, administrative controls, and the use of personal protective equipment (PPE), each of which combine to form an integrated and thorough approach to protecting health and safety.

### **Notice**

- This guidance is not exhaustive and is advisory only; it is not intended to replace applicable health and safety laws and regulations, nor does following this guidance ensure compliance with those laws and regulations. Awareness and observation of legal responsibilities must form an integral part of court operations in response to COVID-19. The guidance must be reviewed and adapted by adding good practices and policies to meet local circumstances and needs.
- When putting health and safety measures in place, always consider the hierarchy of controls, continue to evaluate how effective they are, and make changes when needed. Consultation with key stakeholders is also necessary, including workplace health and safety committees.

## **Process Survey and Risk Identification: In-trial Jury Proceedings**

The operation of criminal jury processes differs by jurisdiction, location, and court facility. Common elements of jury proceedings that occur during the conduct of a criminal trial are summarized below, in order to help define risks and inform appropriate control measures. A more detailed account of these elements is available in the Action Committee's [Phases and Steps of a Criminal Jury Trial](#).

**Note:** While this Tip Sheet was developed to identify and mitigate risks that arise at each phase of a criminal jury proceeding, it (and [others in the series](#)) could be applied or adapted to other trial participants. Witnesses, for example, share some characteristics with jurors: they are required to attend at various points in a trial; their movements in and out of the courtroom are similarly prescribed; and they may also require safe spaces in which to wait, either individually or accompanied by a support person, while their physical presence is not needed in the courtroom.



## In-trial Criminal Jury Proceedings

- **Sitting in the jury stand** - Jurors sit together in a jury stand. Within the jury stand, chairs are usually close together. The jury will remain in the jury stand for most of the time that the court is in session. The proximity of the jury stand to other courtroom elements and individuals varies by setting.
  - **Hazards:** Prolonged physical proximity of individuals within the jury stand; possible proximity of jurors to other individuals in the courtroom; contact with surfaces within the jury stand.
- **Courtroom configuration** - Other individuals in the courtroom include the judge, court clerk(s), court recorder, counsel, and the audience. Security staff, translators, and additional personnel may also be situated at various locations.
  - **Hazards:** Prolonged physical proximity of individuals; contact with common surfaces in the courtroom; instances of close proximity as individuals move and interact in the courtroom.
- **Jury instructions** - In instructions to the jury, the judge will specify the length of each sitting, as well as the time at which breaks will be taken. At the opening of a trial, the jury will be directed to the jury room and asked to decide upon the selection of a foreperson. When moving between the jury room and jury stand, both at this point and other stages during the trial, jurors may carry some personal effects with them.
  - **Hazards:** Physical proximity of jurors within jury room; contact with surfaces in jury room or during movement between the courtroom and jury room; personal effects could become contaminated surfaces and sites for transmission.
- **Exclusion of the jury** - The judge may order the exclusion of the jury from the courtroom in certain circumstances. During the exclusion of the jury from the courtroom, the jury will be directed to the jury room by a court services officer. The jury will remain together, and jurors will be asked to remain in the jury room until the judge calls them back into the courtroom.
  - **Hazards:** Proximity between jurors and court services officers; proximity of jurors to one another within the jury room; contact with surfaces in the jury room or moving between the courtroom and jury room.
- **Presentation and hearing of evidence** - Witnesses give evidence from the witness stand by answering questions posed by counsel. Counsel may "approach" witnesses or the jury in order to show them exhibits or other material, and may also pass exhibits to the court clerk or approach the judge to speak with them privately. Exhibits can include documents, physical objects or photographs, or other materials (such as enlarged images or diagrams). As evidence is presented, jurors may view these materials from afar, or on display screens, or may have opportunities to "interact" with and physically inspect exhibits. Jurors sometimes also use notepads and document binders.
  - **Hazards:** Proximity of individuals (jurors, counsel, the accused, the judge, etc.) during the hearing of evidence; physical contact with exhibits, documents, or any other objects passed between individuals; notepads and binders could become contaminated surfaces and sites for transmission.
- **Discharge of jurors** - During the course of a trial, the judge may direct that one or more jurors be discharged, which results in them being relieved immediately from the jury. This can arise when a juror falls ill or faces other intervening circumstances, or where circumstances arise that disqualify the juror. Alternate jurors, when used, will also be discharged before the end of the trial. Discharged jurors will exit the courthouse and typically arrange for their own transportation home.
  - **Hazards:** An individual who falls ill may have contracted COVID-19 and may transmit to other individuals; discharged jurors may transmit COVID-19 to the community if exposed while in the courthouse.

Note: For guidance on jury sequestering, deliberation and release at the end of trial, see the Tip Sheet on [Jury Sequestering, Deliberation, and Release](#). For guidance on the movement of jury members in and out of the courthouse, including during breaks in trial proceedings, see the Tip Sheet on [Jury Arrival and Departure from the Courthouse](#).



## In-trial Criminal Jury Proceedings

### Mitigating Risks

Accounting for each element of in-trial jury proceedings, the following control measures could be introduced to reduce risks of COVID-19 transmission and to help protect the health and safety of court users and personnel.

#### Physical Distancing

- Maintain 2 metres (6 feet) distance between people whenever possible, for example by:
  - Reconfiguring courtroom elements to enable distancing, including expansion of the jury stand or reassignment of jury seating to courtroom space ordinarily reserved for the audience;
  - Using CCTV or secure remote transmission to enable viewing of the trial by media, members of the public, family members of victims or the accused, and others so as to limit the number of persons in the courtroom;
  - Rearranging the layout of desks, lecterns, chairs and other objects;
  - Blocking seating in the audience;
  - Employing visual markers or cues to control the movement of common procedures, such as the display of material to the witness or jury or the movement of jurors between the jury room and jury stand;
  - Reconfiguring seating in the jury room, or using an alternate space for the jury room when current facilities are too small.
- Consider using an alternate facility, such as a conference centre, sports complex or arena, or large community centre where available court spaces are insufficient for physical distancing.
- Ensure the availability of a dedicated space within the courthouse to isolate and care for any individuals who become ill, and ascertain any risk of COVID-19 contraction or transmission to others.

#### Engineering

- Increase ventilation in the courtroom to the extent possible (e.g., by opening windows) and/or change air filters regularly.
- Consider introducing technological alternatives to the physical inspection of exhibits, documents, or other material, for example using magnified computer or video screens.
- Install barriers or shielding where physical distancing is impossible or impractical, for example:
  - Between seating spaces within the jury stand, and around the jury stand;
  - Around the witness box;
  - In front of the judge, court clerk(s) and court recorder;
  - In front of desks or lecterns used by counsel;
  - Between seating spaces in the audience.

#### Administration

- Consider using the presiding judge's opening statement as an opportunity to highlight health and safety protocols, and to identify courtroom personnel available to answer questions and provide ongoing guidance.
- Train courtroom personnel, especially those with direct responsibility for jury support, to provide ongoing health and safety guidance to jurors or others, and to isolate and safely assist any person who becomes ill.
- Establish a protocol for jury movement in and out of the jury box, and between the jury box and jury room. Similar practices could be adapted for witnesses as they move in and out of the courtroom, either individually or as a group, with or without accompanying individuals (e.g., victim support workers).



## In-trial Criminal Jury Proceedings

- Establish a protocol for the positioning of counsel when approaching witnesses, jurors, or the judge, and employ visual cues such as floor markers.
- Limit the physical handling of exhibits, documents, or other material to only essential cases, and provide hand sanitizer for use immediately after handling materials.
- Consider designating a court officer responsible for handling and displaying exhibits.
- Post signage in the courtroom and jury room to reinforce basic infection control practices (frequent hand washing, coughing or sneezing into folded elbow, etc.).
- Provide hand sanitizer at entrances and exits, and on desks and tables.
- Consider establishing entry and exit protocols for the courtroom to mitigate congestion, and direct entry and exit movement to different doors if possible.
- Create markings on the floor and signage to indicate movement patterns.
- Employ a washroom attendant to manage volume of usage at a given time.

### Personal Protective Equipment (PPE)

- Provide disposable surgical masks daily by making them available upon arrival at the courthouse, with clearly posted instructions on how to safely put on and remove a mask.
- Provide appropriate PPE, such as face shields, to any court personnel who are required to be in close contact with other persons, such as security officers, court officials responsible for guiding and assisting jurors, officials responsible for handling and displaying exhibits, etc.
- Ensure appropriate safety training of any court personnel required to use PPE, consistent with applicable occupational health and safety laws and regulations.

Get further guidance on [protecting court personnel and general practices for sanitation and disinfecting](#) applicable to all court operations.

### Resources and References

- Action Committee on Court Operations in Response to COVID-19 Terms of Reference:  
<https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/ac-ca/term.html>
- Action Committee on Court Operations in Response to COVID-19 Core Principles and Perspectives:  
<https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/ac-ca/cpp-pfp.html>
- Action Committee on Court Operations in Response to COVID-19 Safe and Accessible Courts: Orienting principles for Canadian Court Operations in Response to COVID-19 Overview:  
<https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/ac-ca/sac-tsa.html>
- Court Operations Tip Sheet series:  
<https://www.ccohs.ca/products/publications/covid19/#courts>
- Public Health Agency of Canada:  
<https://www.canada.ca/coronavirus>