



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

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.

NOTICE: *This document highlights best practices when the epidemiological situation and relevant risk assessments call for enhanced public health measures to control the spread of COVID-19 in a court environment. Please contact local public health authorities for current requirements, which may differ from the practices outlined in this document, and your local Occupational Health and Safety regulator for current guidance specific to the workplace.*

OVERVIEW

The Public Health Agency of Canada (PHAC) and the Canadian Centre for Occupational Health and Safety (CCOHS) recommend using a [layered approach of control measures](#) that can be adapted to various work environments in order to support the safe restoration or continuation of activities in response to the COVID-19 pandemic.

These control measures embody common elements of federal, provincial, and territorial public health approaches and occupational health and safety legislation. Selecting workplace-appropriate control measures involves **identifying risks** and implementing corresponding **risk mitigation measures**.

Occupational health and safety representatives of court personnel should be consulted in this process. Risk identification and mitigation also present an opportunity to consider broader accessibility issues for court users, including those who face intersecting factors of marginalization or vulnerability or additional barriers to access to justice.

IDENTIFYING AND MITIGATING RISKS

In this context:

- *court environment* refers to any place where court hearings are held or court services are performed or delivered, including common areas (such as foyers, washrooms, seating areas, and cafeterias) and alternate facilities used by court personnel and court users;
- *court personnel* refers to all people involved in the operation of a court, including judges, security staff, and administrative officials; and



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- *court users* refers to anyone who accesses a court environment, including lawyers, litigants, accused persons, witnesses, members of the public, and persons who perform related services within court environments (such as police, counselors, and social service providers).

Identifying Risks

Courts should [evaluate the risk](#) of introduction and transmission of the virus within their environment. In identifying risks, consider the relevant setting, including the number, proximity and duration of in-person contacts, the physical environment, and the characteristics and potential vulnerabilities of court users and personnel. The risk of COVID-19 introduction and transmission increases when people are

- in poorly ventilated closed spaces
- in crowded places
- having close-range conversations or are in settings where there is shouting or loud speaking
- physically interacting with others
- frequently touching shared surfaces or objects, and/or
- showing symptoms of COVID-19 yet are permitted to remain in the court facility

The COVID-19 virus can be transmitted by people who are

- **symptomatic**: showing symptoms and infected with COVID-19
- **asymptomatic**: not showing symptoms but carrying the virus and can infect others, and
- **pre-symptomatic**: infected with COVID-19 but not yet showing symptoms

An effective method for identifying risk is to take a “mental journey” through use of the court environment from the perspective of different court personnel and users, noting the variety of elements that make up the environment as a whole to create an inventory of risks. Consider using a [formal risk assessment template](#) to help identify those risks and answer the following questions:

- **Geographic and community setting:**
 - What is the local rate of infection and/or what are the COVID-19 severity indicators (hospitalizations, Intensive Care Unit admissions and deaths) and wastewater levels if available?
 - Is the community densely populated (risk may increase as populations become larger and more crowded, depending on the rate of infection)?



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- What unique factors related to community dynamics and resources must be considered, having regard to the nature of the court (e.g. circuit/itinerant court; drug treatment, mental health, other specialized courts, youth court)?
- **Personnel and user populations:**
 - Do court users and personnel include [individuals at higher risk](#) of suffering severe health consequences should they contract COVID-19?
 - Do court users and personnel include persons at higher risk of contracting or transmitting COVID-19?
 - How are community demographics taken into account in scheduling hearings (e.g. childcare issues, school closures) and access to court (e.g. reliance on public transit)?
- **Physical elements:**
 - Are some elements of the court environment especially prone to individuals congregating in close proximity?
 - Is the court environment accessible to persons with disabilities, including those with mobility challenges? Is close physical contact between court personnel and persons with disabilities necessary to maintain accessibility?
 - Will court users and personnel come into physical contact with high-touch common surfaces, such as doorways, elevator buttons or court technology?

Mitigating Risks

The courts provide an essential service as part of the public sector. They have a dual obligation to protect both court personnel for whom the courts are a workplace, and court users, many of whom are being compelled to attend. The Public Health Agency of Canada (PHAC) and the Canadian Centre for Occupational Health and Safety (CCOHS) recommend a [layered approach](#) to controlling COVID-19 in the workplace.

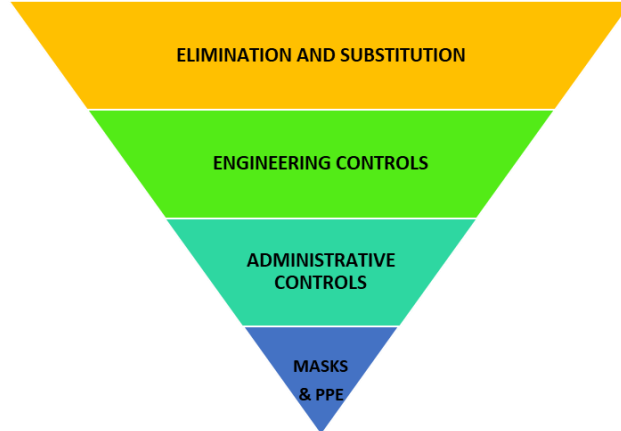
CCOHS recommends employing a [hierarchy of control measures](#), conceived of as a reverse pyramid, to effectively mitigate risk. This approach reflects the requirements of applicable federal, provincial, and territorial occupational health and safety legislation.

An approach involving multiple layers of control measures represents the most effective strategy to minimize the risk of introducing and transmitting the virus. The controls implemented should be based on the risks identified in the court's risk assessment. In the exercise of due diligence and responsible stewardship, control measures are likely to evolve with knowledge related to the risks posed by COVID-19 and the usefulness of such measures to mitigate those risks. A [court audit tool](#) can help to assess the risks and to design and implement an effective, multi-layered approach to control measures within specific court facilities.

At all points, consideration should be given to ensuring selected measures do not introduce barriers to access, particularly for vulnerable or marginalized court users.



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[Caption: An inverted pyramid divided into four coloured levels, each labeled with text in black. From the top of the inverted pyramid (the widest part) to the bottom (the point), the levels are: yellow labeled “Elimination and Substitution”; green labeled “Engineering Controls”; turquoise labeled “Administrative Controls”; and blue labeled “Masks and PPE”.]

The following control measures could be introduced to reduce the risks of exposure to and transmission of the virus and to help protect the health and safety of court users and personnel.

Elimination and Substitution

Implement remote and technological alternatives for court users and staff as feasible, such as telework arrangements, virtual hearings and virtual services including phone or online assistance and electronic filing.

Physical Distancing

For physical distancing, maintain at least 2 metres (6 feet) distance between people whenever possible, for example by:

- Limiting the number of people that can access court facilities – including designated areas – at any time, posting maximum occupancy notices so they are clearly visible and monitoring occupancy levels
- Designating special entries and exits for court personnel and court users to alleviate congestion at common building access points
- Designating separate areas for courthouse entry and exit, to encourage directional flow and reduce congregation
- Using markers or barriers to create walking paths
- Marking floors with distancing cues
- Blocking seats in waiting areas or other common spaces used by court users



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- Considering staggering start times if multiple hearings are occurring in a court facility on the same day
- Considering using an [alternate facility](#) as feasible, such as a conference centre, sports complex or arena, or large community centre where available court spaces are insufficient for physical distancing
- Designating a dedicated space within the court facility to isolate and care for any individuals who [become ill](#)

Engineering Controls

These measures focus on adjusting the physical environment to reduce inherent risks of exposure due to various modes of transmission, such as aerosols, close contacts, or contamination of high-touch or common surfaces. In the court setting, engineering controls can include:

- Ensuring that [ventilation](#) systems of indoor spaces are operating properly. To improve ventilation:
 - Open windows and doors where possible, even for a few minutes at a time during the day as weather permits and provided this action does not pose a safety risk
 - Run the heating, ventilation and air conditioning (HVAC) fan continuously at a low speed
 - Adjust building ventilation systems and air conditioning units to keep rooms cool rather than using powerful portable cooling fans that might increase the spread of COVID-19
 - Limit the use of demand-controlled ventilation. Keep the system running at the optimal setting
 - Increase filtration efficiency to the highest level appropriate for the ventilation system. Clean or change air filters regularly as recommended by the manufacturer
 - Consult an HVAC professional to ensure the HVAC system is suitable for the setting, type of activity, number of occupants and length of time the space is occupied, and before making changes to the system
 - If possible, run systems for two hours at maximum outside airflow before and after the rooms and/or building are occupied
 - If possible, run washroom exhaust fans continuously if they are vented to the outside
- Implementing transparent [physical barriers](#) where possible to help protect court users and personnel in certain types of interactions (e.g. close contact with security or registry officials) and in designated areas where they are required to speak to each other (e.g. in front of the judge's bench, court clerk and court recorder; in front of counsel tables or lecterns, and the witness box). Barriers complement existing public health measures and



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provide an additional layer of protection. Barriers may be required when masks cannot reasonably be worn or must be removed to ensure the integrity of court proceedings. Consider consulting a ventilation specialist to ensure that barriers do not interfere with the airflow and ventilation of the space, which could create other risks

- Considering the use of portable high efficiency particulate air (HEPA) filters only in situations where enhancing natural or mechanical ventilation is not possible **and** when physical distancing can be achieved. Consult an experienced professional before using these filters

Administrative Controls

These measures focus on procedures, protocols, policies and work practices to effectively implement the various levels of control measures. It is important to provide information and training tools to enable court personnel and users to comply with applicable health and safety measures. In developing administrative controls, consider the specific needs of different groups of court users and personnel, and provide for accommodation measures as needed to promote safe accessibility to court facilities and services.

In the court setting, examples of such administrative controls may include:

- Vaccination policies or guidelines, as may be deemed appropriate to the context, in consultation with relevant experts and committees, and with access to justice as a guiding principle
- [Screening](#) of court personnel, jurors and other court users prior to and/or upon their arrival at the court facility
- Continuous self-assessment or monitoring (“passive screening”) by all court personnel and users while in the court facility
- General practices on hygiene, [cleaning and disinfecting](#) – see the Action Committee’s [Guidance on Protecting Court Personnel and Court Users and General Practices for Cleaning and Disinfecting](#)
- Where called for in a given jurisdiction, feasible, and subject to applicable legislation, the collection of basic information on all persons who enter the court facility, to support [contact tracing](#) efforts by the local public health authority. Information to support contact tracing efforts must be handled properly, stored securely, disseminated only as necessary to authorized officials and destroyed rapidly once it is no longer needed
- Where contact tracing is not being performed, consideration may be given to whether and how court personnel and users may be informed if officials become aware of a positive case or exposure in a court facility. In this case, no information would be collected beyond that which is normally collected in the course of a proceeding. In either instance, a court contact person may be designated to support such efforts



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Communication

Broadly shared and accessible communications are vital to ensuring that protocols are followed and that all court users and personnel feel safe within the court environment. Here are some best practices to ensure court personnel and users are aware of, and able to follow health and safety protocols:

- Post clear and visible signage throughout the courthouse and courtrooms
- Create communication formats to assist users who may face barriers in reading, hearing, speaking, or understanding
- Create additional language versions to assist court users as needed
- Provide information to users prior to their arrival at court (e.g. through posting on the court website, Frequently Asked Questions (FAQ), information attached to summonses or appearance notices, and “push” messaging to key stakeholders (professional networks, community and support groups))
- Include advance instructions to users on what to do if they test positive for COVID-19 or are otherwise obligated to isolate or quarantine shortly prior to a scheduled court appearance
- Make training available for court personnel to support effective communication of safety measures
- Facilitate two-way communication to elicit feedback from court users on how safety protocols are working in practice, whether needs are evolving, and what adjustments may be useful (e.g., exit surveys, online or phone questionnaires, informal interviews)

Masks and Personal Protective Equipment (PPE)

[Masks](#) and, in [some situations](#), [PPE](#), can play an important role in reducing the risk of exposure to and transmission of the virus due to close contact or aerosols. In the court setting, courts may:

- Promote the wearing of well-constructed, well-fitting masks [suitable](#) to the setting and intended activities
- Provide well-constructed, well-fitting (e.g. adjustable or different sizes), disposable masks to all court users and personnel, and clear instructions on how to safely and properly put on, wear and remove masks
- Consult with occupational health and safety experts to identify any court personnel whose functions may require the use of PPE, and provide training on its use
- Establish protocols governing the wearing of masks and PPE in court facilities and courtrooms and communicate them to all users and personnel
- Implement measures to accommodate and protect court users and personnel when masks cannot reasonably be worn or should be removed to ensure the integrity of court proceedings



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- Provide face shields or goggles when eye protection is required or recommended (e.g. cleaning, first aid procedures, prolonged close contact)

RESOURCES AND REFERENCES

For additional practical tips on implementing a layered approach of control measures in the courts, see the Action Committee's [Message: Keeping our Court Environments Safe in the Midst of a Pandemic](#) and its annexed Checklist.

From the Public Health Agency of Canada

- [COVID-19: Prevention and Risks](#)
- [Reducing COVID-19 risk in community settings: a tool for operators](#)
- [COVID-19 Mask Use: Types of masks and respirators](#)
- [COVID-19: Guidance on indoor ventilation during the pandemic](#)

From the Canadian Centre for Occupational Health and Safety

- [COVID-19 Health and Safety Planning for Employers](#)
- [COVID-19 Health and Safety Resources](#)
- [Apply the Hierarchy of Controls](#)
- [Take a Layered Approach to Control COVID-19 in the Workplace](#)
- [Protect Yourself and Others from COVID-19](#)