



VIRTUAL BAIL: AN IMPLEMENTATION ROADMAP

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.

As part of its mandate, the Committee facilitates information sharing amongst Canada's courts – which includes highlighting opportunities to help restore and modernize court operations across the country.

ISSUE

As part of improving access to justice, this document provides a roadmap setting out a strategy and key considerations for piloting virtual bail.

Timely bail hearings are essential to promoting access to justice and upholding constitutional rights in criminal proceedings. Yet, in many communities, providing timely access to bail hearings is an ongoing challenge. Courts may not offer daily sittings; persons may be arrested far from the nearest correctional or court facility; the transportation of in-custody accused persons to and from court can be costly and time-consuming, and create security risks; and releasing an accused on bail while far from home can displace them from their community, creating hardship. The COVID-19 pandemic has aggravated these challenges since travel to remote communities was limited at times to prevent the spread of the virus.

As a result, courts across Canada have explored ways to leverage technology in order to promote timely access to bail hearings, particularly in northern and remote communities, with many courts considering retaining or expanding this option beyond the pandemic. But since virtual bail comes with its own set of challenges, careful planning and awareness regarding potential challenges will help to ensure virtual bail is feasible and improves access to justice.

The purpose of this document is to provide a roadmap that sets out issues to consider with respect to implementing centralized virtual bail hearings in collaboration with other justice stakeholders, in an effort to improve access to justice and to reduce delays in bail processes. This roadmap and the issues noted are based, in part, on the work undertaken in British Columbia's Northern region which involved the Provincial Court of British Columbia (Provincial Court), the Ministry of the Attorney General, Corrections, Sheriffs, Legal Aid BC, defence counsel, BC Prosecution Service, Public Prosecution Service of Canada, and police. While this roadmap arises out of the experience of the Provincial Court of British Columbia, the Court and the Action Committee recognize that issues may vary depending on the circumstances of individual courts.



Action Committee on Court Operations in Response to COVID-19

THE BRITISH COLUMBIA PILOT PROJECT

Virtual telephone bail hearings have been used for years in British Columbia, primarily for evening and weekend bail hearings. In response to the COVID-19 public health directives in March 2020, the Provincial Court, in collaboration with stakeholders, created a virtual bail model by incorporating many of the processes developed for the weekend and evening bail model.

In 2020, the court developed a bail pilot project in the Northern region of the province. This project involved testing a new, centralized bail model where all bail hearings in the Northern region would be conducted in two virtual courtrooms.

Initially, videoconferencing units were put into several police detachments across Northern BC, as well as in the Prince George Regional Correctional Centre to support virtual bail hearings. There were challenges with resources and security requirements to support the installation of videoconferencing in police detachments from several business areas. Accordingly, the project pivoted with the result that videoconferencing is used for accused persons in the Correctional Centre in the Northern region. Either telephone or videoconferencing are used for accused persons in police detachments in the Northern region where there is not a full time staffed courthouse. Videoconferencing installed in sheriff's cells at the courthouse is used for accused persons in locations where there is a fully staffed courthouse in the Northern region. (This allows sheriff resources to be used in the courthouse, without requiring additional sheriff resources to assist at police detachments. It can also be easier to install videoconferencing in the courthouse versus a police detachment.)

A STRUCTURED APPROACH TO LEADING AND MANAGING CHANGE IN THE COURTS

As outlined in the Action Committee's [Orienting Principles: Leading and Managing Change in the Courts](#), applying a structured and inclusive approach to leading and managing change can promote successful and meaningful reform. Based on the information from British Columbia's Virtual Bail Pilot Project, the following elements are meant to assist other jurisdictions who may wish to implement similar initiatives.

1. Knowing Where We Are Going (and How to Get There)

For any institution to determine what change is appropriate, it must first know what it seeks to achieve.

In developing a strategy, start by mapping out what your court is seeking to achieve and why, starting from the existing context and conceptualizing how to improve upon it in order to meet specific objectives. This involves onboarding and collaboration with relevant partners and identifying technological requirements.



Action Committee on Court Operations in Response to COVID-19

The Starting Point: Issues, Objectives and Scope

Issues

Start by identifying the issues with the current situation. By way of illustration, identifying the issues may look like this:

- An accused is arrested on Monday in a small community where the court convenes only on Thursdays. If they are not released by police and want a bail hearing before a judge, they would be held in custody while transport was arranged. Then, they would be transported to a location potentially far away from their home community to appear in court for the bail hearing. If released on bail, they would find themselves far from home, perhaps with no way to get back. This dislocation can result in people losing housing, employment, and local supports, all of which are very destabilizing.
- If the accused had been arrested on a Thursday, they could have had a bail hearing at the local courthouse and be released in their own community. But the judge would have had to interrupt the trials scheduled for that day to conduct the bail hearing. The resulting loss of court time might prevent a scheduled trial from finishing. Adjourning that trial would cause the litigants and their witnesses inconvenience, delay and expenses. As well, this approach limits the ability to use judges from other locations where a trial has collapsed to hear the bail matter, allowing the local judge to hear a scheduled trial uninterrupted.

Objectives

Next, identify what your objectives are and what you want to test. Establish how the court foresees improving the process in order to meet the objectives. Those involved in the bail process need to know why virtual bail is necessary or should continue to be used; what it will entail; and the risks of not changing, as weighed against the benefits of the status quo.

Key objectives may include:

- reducing time spent in-custody awaiting a bail hearing, with fewer overnight remands in police cells
- fewer transports of prisoners by sheriffs to courthouses and correctional facilities
- reducing displacement of accused people from housing, employment, health, and other support in their own communities
- reducing or eliminating interruptions to previously scheduled trials due to unscheduled bail hearings for newly arrested people
- increasing efficiency through standardized, centralized operations for scheduling and documentation
- testing virtual hearings and process changes intended to enhance communication and efficiency
- reducing the need for lawyers to travel to different court locations, and reducing time lawyers spend waiting for bail hearings to proceed
- consolidating legal aid and duty counsel services from larger regions to ensure accused persons in smaller communities have phone or video access to counsel before their bail hearing



Action Committee on Court Operations in Response to COVID-19

- increasing access to Crown resources for smaller communities
- improving communications between stakeholders to reduce wait times in court
- sharing information about local community resources to help assemble timely release plans, promote consent releases when appropriate, and minimize adjournments at the bail stage
- increasing accused attendance by videoconference (rather than telephone)

Terms of Reference

Creating terms of reference provides guidance to keep the project on track. However, it is also helpful to remain flexible and respond to emerging information rather than staying fixed to the original terms of reference if process changes or a pivot in the approach are required.

The Partners

There will need to be structured collaboration and coordination between a number of justice partners involved in various aspects of bail hearings such as the Court (judges and those that schedule hearings), Ministry of the Attorney General, Sheriffs, Corrections, Legal Aid, defence counsel, the provincial and federal Prosecution Services, the police, and Indigenous organizations.

The Technology

Early in the planning process, determine what technology needs there will be and undertake coordination to request funding. Below are some examples of technology needs:

- Installation of video conferencing units and software for videoconferencing in:
 - police detachments where possible, while recognizing there can be impediments to installing technology in police detachments including security requirements
 - regional correctional centres
 - counsel rooms in a courthouse so that duty and defence counsel have the option to appear remotely using their own computer or using a counsel room outfitted with the necessary equipment
 - sheriff cellblocks in a courthouse so that accused persons can virtually attend bail hearings from sheriff cellblocks instead of police detachments in locations where there is an existing staffed sheriff cellblock and the court sits regularly
- A virtual platform that enables the creation of virtual hearing rooms to schedule hearings into and break out rooms for counsel and the accused to meet privately (British Columbia for example created two virtual courtrooms for the Northern Region and set out the catchment areas in a practice direction [CRIM 14 Northern Bail Pilot Project](#), as well as break out rooms – see section 3 for further information)
- A centralized scheduling system
- Document management systems to ensure that different judges and counsel can upload information

Trained court clerks can facilitate videoconference connections between the judge, counsel and the accused person for the bail hearing.

Standardized wording for terms of court orders (picklists) can also be helpful as a means to quickly capture the order a judge makes, see for example



Action Committee on Court Operations in Response to COVID-19

<https://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/links> under “Picklists - Standardized wording for bail & sentence orders”.

Technical difficulties, including lack of internet connections, equipment malfunctions, unsuitable or incompatible devices and interfacing systems may be challenges that need to be addressed.

2. Building on a Solid Foundation

Digitizing overly complex, inaccessible or ineffective processes will not resolve underlying issues that constrain access to justice and court efficiency.

Rather than simply transplanting existing in-person and paper-based processes to a virtual environment, look at standardizing and centralizing various processes and practices to increase efficiencies. These adaptations can enable judges, court staff and other justice stakeholders to better serve a broader community from new virtual courts. Below are some concrete examples.

Optimizing Scheduling

To streamline bail hearings daily, the Court can implement a staggered schedule. Here is an example:

- 9:00 AM – 9:30 AM: a designated individual doing the scheduling virtually triages matters and finalizes the morning remand hearing list
- 9:30 AM – 12:00 PM: hearings before a judge for accused persons remanded in custody either appearing from a correctional facility or from a police detachment while awaiting transport to a correctional facility
- 1:00 PM – 4:30 PM: hearings before a judge for accused persons arrested overnight and for whom charges were pre-screened and approved by Crown counsel. To avoid double-booking for defence counsel, the earlier 1:00 PM start time would allow defence counsel to appear before the regular afternoon sittings of other courts

Rethinking Document Filing and Processing

To adapt document filing and processing practices to the new virtual reality, the Court can enact a practice direction to clarify instructions and timelines for filing any documents needed at the virtual bail hearing. For instance, one option is to use a designated email address created for this purpose. The practice direction can also set out the list, format and naming of documents to be filed in support of a bail hearing, and how to treat urgent documents related to new arrests. In addition, it can reiterate the Court’s expectation that counsel would use existing consent forms whenever possible to cancel a scheduled bail hearing or appearance that would not be proceeding, which enables the individual doing the scheduling to remove these cases from the hearing list. See for example the Provincial Court of BC’s [CRIM 14 Northern Bail Pilot Project](#).

Complementary Initiatives by Project Partners

In addition to the virtual bail initiative, project partners can establish complementary initiatives. This may include the provincial and federal Crown and Legal Aid designating Crown counsel and duty counsel for each virtual courtroom to oversee bail hearings and promote consistency



Action Committee on Court Operations in Response to COVID-19

and continuity. Counsel may pre-establish regional communication networks to help build upon and preserve local knowledge regarding community services for release plans.

3. Designing with the End-User in Mind

An end-user based design involves thinking about who will be using the procedure or system, and what constraints they may face.

A virtual bail pilot will involve a variety of end users with diverse needs. Communication lines between different justice stakeholders, both internal and external, are essential to ensure varying needs are efficiently met.

For example, accused persons would need secure communication channels to communicate remotely with duty counsel or defence counsel. Justice stakeholders such as police, Crown counsel and corrections would need communication tools to effectively share information and documents to support bail hearings. Defence counsel would need accurate and up-to-date information on local community services to help assemble release plans for their clients. Crown and defence counsel would need communication channels to communicate with each other and with the individual scheduling the virtual bail hearings.

To meet these needs, consider creating a separate communication system from the Court's own communication tools, such as an MS Teams channel for virtual bail. This dedicated channel can be made accessible to all counsel, community service providers and the individual scheduling the hearings to facilitate communications and exchanges of information between these stakeholders. The channel also enables the creation of virtual spaces for defence or duty counsel to speak confidentially with their client using audio or video technology.

To make the experience more user-friendly, consider having designated sheriffs assigned to facilitate virtual communication between accused persons and counsel.

4. Including Staff and Other Stakeholders in the Process

Consulting staff and other stakeholders early and frequently can help to identify positive changes and overcome barriers to success.

Successful implementation of virtual bail relies on a coordinated and structured approach with clearly defined roles and responsibilities. Here is an example of an effective working structure.

The implementation of virtual bail could be overseen by a Steering Committee to ensure implementation is strategically aligned with the overarching goal of improving access to justice. The Steering Committee may include leaders from all key stakeholder organizations, namely:

- the Chief Judge, an Associate Chief Judge and Regional Judge(s) impacted by the implementation
- Assistant Deputy Ministers from the Ministry of the Attorney General and Corrections Branch
- the Deputy Attorney General and the Assistant Deputy Attorney General
- Provincial and federal Crown Counsel
- the head of Legal Aid, and



Action Committee on Court Operations in Response to COVID-19

- the Assistant Commissioner or Chiefs in charge of policing

A project management team could also be created. The team would be responsible for the day-to-day leadership of the project from development to implementation. The project management team would bring together representatives from the judiciary, court services, Crown, local defence, legal aid, sheriffs, police and corrections to identify process mapping for in person bail hearings and use the information to transition to a virtual bail process.

In addition, a working committee could be formed. The working committee would be comprised of subject matter experts from each impacted business area responsible for process mapping in person bail hearings and use that information to determine how to transition to a virtual process. The working committee would develop procedures, relay communications to regional stakeholders, bring forward issues for discussion and resolution, and oversee implementation.

Also of assistance after implementation would be a continuous improvement working group which an Associate Chief Judge could chair and which would include regional representatives from each of the business areas/stakeholder groups.

Finally, various technical sub-committees and working groups may need to be put in place to address specific elements such as technology installations, facilities impacts, and project evaluation.

5. Starting Small

Even in times of crisis or emergency, taking a step-by-step approach to follow a piloting and gradual scaling methodology can be useful as courts move forward.

To allow the court to test the technology and the processes, and adjust as needed in a flexible manner, it may be best to start an initiative in a small region or identify a few locations where the needs are most pressing. This approach also allows the court to determine the potential viability of extending it to additional locations or regions.

6. Communicating About the Change

To support change, both staff and court users need to know why it is necessary; what it will entail; and the risks of not changing, as weighed against the benefits of the status quo.

Using different communications tools at your disposal to disseminate the information to justice stakeholders and the public can facilitate the transition to a virtual bail process. Before virtual bail starts, the Court may issue a [press release](#) informing justice stakeholders and the public about the purpose, scope and intended objectives of the new initiative, and provide hyperlinks to other relevant sources of information, including virtual hearings guides for the videoconference platform, Q&As and other applicable court policies.

The Court may post a [Practice Direction](#) outlining the functioning of virtual bail on or before the start date to clarify which pre-existing rules and policies of the Court will continue to apply and which ones are being adapted or newly created.

In addition, the Court can use social media, such as their [Twitter page](#), to circulate information and updates about virtual bail implementation. Change can also be communicated through [legal news coverage](#) and provincial or territorial media coverage.



Action Committee on Court Operations in Response to COVID-19

7. Identifying and Addressing Training Needs

Judges, staff, and court users will require training as new processes are put in place to enable an effective transition.

Consistent training of external stakeholders along with understanding technical and resource constraints is required to implement new technologies effectively. To ensure that all stakeholders are equipped with the necessary knowledge and skills regarding new processes and technology, judges, staff and counsel should be provided with technology training, such as training on the video conferencing platform, and for counsel, any specialized video conferencing channel. This was done in BC with the Court collaborating with the BC Branch of the Canadian Bar Association and the BC Trial Lawyers' Association by holding a 90-minute [webinar](#) for stakeholders on the use of MS Teams in the Court. In addition, the Court published a [Guide for appearing in the Provincial Court using Microsoft Teams](#). Real time training was also provided by the Ministry of the Attorney General. As well, training videos were recorded so that participants could refer back to them or work at their own pace.

8. Evaluating and Adjusting

Evaluating and adjusting change at regular intervals, through evidence-based and consultative processes, can help determine what changes to retain, abandon or scale up moving forward.

Create and evaluate performance measures to track expected outcomes, such as:

- **Community displacement:** whether there is a reduction in percentage of people arrested on new charges that were released outside of their home community.
- **Access to justice:** whether the increase use of video conference bail hearings improved access to counsel for accused persons due to counsel's increased flexibility to appear in court.
- **Court efficiency:** whether there is a reduction in adjournment of trials (and trial continuations) due to lack of court time; and whether there is a reduction in time to trial.
- **Meaningful bail hearings:** whether there is an increase in percentage of bail hearings that result in substantive outcomes (release order, detention order, or resolution of charges) rather than adjournments.
- **Effective use of resources:** whether there is an increase in the ability to schedule bail hearings more quickly through a centralized model and in the ability to use resources from other court locations.
- **Stakeholder feedback:** distribute an online survey to contacts within stakeholder organizations who have participated in the pilot project.

When a new process is implemented, be aware that efficiencies may not be immediately realized as the court may need to run in parallel in person and virtual options for a period of time.

As well, evaluation can be challenging if there is a lack of baseline data prior to the virtual bail implementation to be compared to the data captured after the implementation. Compiling



Action Committee on Court Operations in Response to COVID-19

comparative data at various stages of implementation can help to evaluate the effectiveness of measures rolled out gradually or adjustments made along the way, and to mitigate challenges arising from the lack of baseline data.

POINT OF CONTACT

For more information on the British Columbia Pilot Project, please contact:

Provincial Court of British Columbia
Office of the Chief Judge
Suite 337 - 800 Hornby Street
Vancouver, British Columbia, Canada
V6Z 2C5
Phone: (604) 660-2864
Fax: (604) 660-1108