

Jury Management During Pandemic

In anticipation of jury trials resuming, and in light of public health guidelines to combat the spread of COVID-19 and maximize personal safety for all participants, The Ministry of Justice's Court Services has provided the following direction on the jury management plan for trials set to proceed commencing in the fall of 2020. These modifications are intended to facilitate the safe execution of jury trials as the Court may schedule them throughout the province. They have been developed in consultation with the Chief Medical Health Officer and have also considered the recommendations of the Action Committee on Court Operations in Response to COVID-19.

I. CONSULTATION IN ADVANCE OF TRIAL

The Sheriff is responsible to consult with the Local Registrar and trial judge on a number of issues, including the size of the panel that is required as well as the local realities that may impact the panel estimate.

It is of utmost importance that counsel advise the trial judge and the Local Registrar of any specific procedural plans that may impact the management of a jury trial well in advance of the matter proceeding. This includes any specific requirements such as the schedule of witnesses set to attend, as well as any special accommodations that may be required, including the remote attendance of witnesses by video.

In light of the pandemic and public health guidelines for large gatherings, consultation on the panel size will be informed by the current rate of COVID-19 transmission reported by public health for the region and communities in which the judicial centre is located. Consideration will also be given to managing the panel size to ensure adequate people attend at selection.

Given the limited capacity identified in courtrooms throughout the province, offsite locations in each judicial centre will be identified with the input of the Chief Justice and trial judge. Court Services will approve the offsite locations for both jury selection and jury trials. This practice will continue to occur until such time as public health guidelines allow for jury selection and trials to occur safely within established court houses throughout the province, i.e., lifting of long-term restrictions.

The offsite locations will be organized in a way that adheres to public health guidelines including hygiene practices, enhanced cleaning/disinfecting, physical distancing (including for seating) and screening before entry

When a suitable alternate trial location is identified and selected for use by the Inspector of Court Offices, the Sheriff and Local Registrar will organize the alternate space to prepare for the jury selection and trial.

When selecting an alternate jury selection and trial location, Court Services will

attempt to accommodate the following, where space permits:

- (1) A room to conduct jury selection as well as the trial itself;
- (2) A separate room to serve as Judge's Chambers during the trial;
- (3) Separate space to serve as room for each counsel;
- (4) Space for appropriate security and COVID-19 screening, including space to manage attendance of in-custody accused (where applicable);
- (5) Multiple washrooms;
- (6) Adequate parking;
- (7) Deliberation and breakout/lunch room for the jury;
- (8) Witness Interview Room;
- (9) Witness Softroom;
- (10) Secure pathways
- (11) Secure storage of files
- (12) Accommodate the public and media, either in-person or virtually; and
- (13) Court staff break room

Alternate locations will be configured in such a way to ensure physical distancing can be maintained as much as possible. In addition, the alternate location will have appropriate ventilation to ensure adequate air flow during the proceedings in accordance with the advice provided by Public Health.

The selection of alternate locations will also involve a review of the Intellectual Technology capabilities and opportunities for installation to ensure proper links for out of court testimony both from the soft room and any other remote location.

Counsel will be required to provide a preliminary list of attendees for the trial to the Judicial Centre Sheriff, including family members and support persons. Counsel will be required to provide the Judicial Centre Sheriff a list of attendees in advance of trial and, where the attendance is for a specific day, the day before the person is set to appear. The Judicial Centre Sheriff will ensure the onsite Court Security Deputy Sheriffs are provided the list. The attendee list will be provided by noon the day before trial or the specific date the person will attend. Given the limited space at some locations, the attendance of non-essential participants may be restricted.

Media will be asked to provide advance notice to the Courts Communication Officer should a representative plan to attend the trial. Where possible, alternate means for connecting the media and the public will be explored.

II. THE SUMMONS PROCESS

The local Sheriff will request a random list of names from the Ministry of Health at least 8 weeks before the jury trial is set to begin. The compilation of the list of names is governed by Section 7 of the *Jury Act*.

Court Services will ensure that selected and potential jurors feel safe while attending at selection and at trial. The summons package will be modified to summon potential jurors to attend at staggered times to limit the number of people waiting outside to enter the building and maintain physical distancing both outside and inside the building. In addition, an insert will be included in the material sent to potential jurors that outlines measures taken to protect them from COVID-19 while attending jury selection and while participating as a juror, including physical distancing, proper hygiene practices, physical barriers, visual cues and screening of everyone before they enter.

They will also be advised that procedures will be adopted to safely manage the selection process to ensure the most efficient and safe environment for all and to minimize wait times to the extent possible. The insert will also advise that those who attend at selection, will be required to wear masks. Masking of potential jurors will make it less likely that they would be considered close contacts in need of self-isolation should another juror become symptomatic while serving. Once potential jurors are seated and the Court proceeding commences, the presiding judge will then direct when potential jurors and selected jurors may remove their masks, if at all.

If an individual juror or prospective juror has their own mask that they wish to wear, they will be permitted to do so; if not, they will be provided a disposable mask for each day that they attend the proceeding.

The insert will also provide contact details for a help line so that those who receive a summons can ask questions about how to facilitate their attendance.

The Sheriff will be responsible to assess relief requests based on both legislative and policy requirements. Court Services has sought the advice of Public Health regarding specific underlying conditions that may put a person at particular risk if exposed to COVID-19. The Sheriff will assess whether the person should be relieved from serving as a juror on that basis.

III. THE JURY LIST

In accordance with section 12 of the Jury Act, as amended on July 30, 2020, the sheriff will prepare a jury list that contains the following information with respect to each person sent a summons package:

- name;
- juror number;
- date of birth, where known;
- City/town of residence; and
- Disposition of each Return and Summons, being
 - expected to attend;
 - pending a response to the summons;
 - relieved from attending; or

- disqualified from serving.

The Sheriff will provide the Jury List to the Local Registrar approximately 10 working days in advance of trial. An updated list, if needed, will be delivered to the Local Registrar at least 3 days in advance of the trial. In criminal proceedings, access to the jury list filed with the Local Registrar or any other juror information in the possession of the Sheriff may be obtained by the Crown or defence in accordance with the Court of Queen's Bench's Criminal Practice Directive #2.

IV. EMPANELING THE JURY

Between three and five calendar days before the selection day, Court Services will review active case numbers and risks received from Public Health and provide this information to the trial Judge so that the trial Judge can determine if the jury selection will proceed on the scheduled date.

The Sheriff is responsible for identifying all potential jurors who attend for jury selection. They will provide all expected potential jurors an arrival time that minimizes their wait times for checking in. The Sheriff will provide the juror a card with his/her name, juror number and address on it. A duplicate card will be placed by the Local Registrar in the container from which names are randomly drawn. The Sheriff handing out the identifying cards to jurors will wear gloves and a mask. The Local Registrar or designate that is managing selection will be the only person touching the cards that are drawn and will also wear gloves.

The following applies to the use of face masks outside of the courtroom as well as in the courtroom unless the presiding judge directs otherwise:

- each person required to attend Court for jury selection and jury trials, including the court staff, counsel, the accused, and potential and selected jurors will be required to wear a face mask.
- Face masks will be provided to persons required to attend and participate in jury proceedings.
- Potential and selected jurors may choose to wear their own masks;
- The public and media will also be required to wear face masks.
- Members of the public and media will be expected to provide their own face mask; however, consideration to provide a mask to indigent persons will be considered in extenuating circumstances.

Screening at the location will ensure that potential jurors' attendance is properly prioritized. In the event that a summoned juror does not pass the COVID-19 screening conducted by the Sheriffs and is not permitted to enter the facility, the Sheriffs will take the person's cell phone number (if available) and ask them to wait in their car or other safe location so that the presiding Judge can be consulted on the appropriate next steps.

Jurors will continue to be given the option to swear by oath or affirmation. Should a juror wish to swear their oath upon a holy text present in the courtroom, the presiding judge

may direct that the text not be held by the juror, but be placed before them while taking their oath to eliminate the holy text being touched by multiple people.

V. MANAGING THE JURY DURING TRIAL

Every person entering the facility at which the trial will proceed, including jurors will be screened with the COVID-19 self-assessment questions before entering each day. However, this practice is subject to modification by the trial judge. Where feasible, the Sheriff will maintain a separate entrance that can be used for the judge and jurors to enter and exit the facility. Any person being flagged as a result of the COVID-19 screening will not be allowed into the offsite court location. Should a juror or other trial participant be flagged during the screening process, they will be requested to wait in their vehicle or other safe location while the presiding judge is consulted on the situation and the next steps to be followed.

Should any juror become symptomatic they will be quickly removed from the setting by the Sheriff and assessed, including testing, using an established rapid mechanism for help from Public Health.

Jurors seats in the jury box will be positioned two metres apart and will be assigned for the duration of the trial. When jurors are moving throughout the facility during a trial, Sheriffs and/or Jury Guards will monitor their movements to ensure physical distancing is maintained and the potential for exposure to COVID-19 is minimized. Jurors will remain two metres apart at all times. Visual cues will be installed to control traffic flow and to maintain proper distancing.

Unless otherwise permitted by the trial judge to leave the facility during lunch breaks, jurors will not be allowed to attend a restaurant for meals. A break room will be designated to provide a space for this purpose and will utilize assigned seating. Lunch will be provided to jurors, though jurors will be permitted to bring their own lunch should that be their preference. All lunch options, including that purchased by Court Services, will be self-contained for each juror. Bottled water will be provided to the jurors.

Juries are not ordinarily sequestered for the duration of a trial in Saskatchewan.

Sheriffs and Local Registrars will maintain a list of appropriate places for accommodations to be used when jurors are sequestered during deliberations. Facilities where individuals are being housed for self-isolation are not considered appropriate.

Segregated parking will be provided for jurors that will be close to their entrance to the offsite court facility if possible, and will help to minimize their exposure to COVID-19.