



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

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.

Physical distancing is the foundation for any strategy to mitigate risks of exposure to COVID-19 in court environments. Small courthouses and courtrooms present special challenges, since their limited size reduces the degree to which appropriate physical distancing can be maintained between individuals. Canadian courthouses and courtrooms vary widely, ranging from modern, large-scale facilities to historic buildings that have limited capacity for physical reconfiguration. In some settings, courthouses may be very simple structures, such as trailers or one-room portable facilities.

While technological alternatives to in-person hearings provide a critical means of diminishing pressure on Canada's court facilities, it remains necessary for many proceedings to take place in person. Providing equal and accessible justice to Canadians thus depends upon developing effective strategies to ensure the safety of all court facilities, including small courthouses and courtrooms, and on identifying alternatives where existing facilities cannot be used safely.

The Action Committee has developed this **Court Audit Tool** in order to:

- guide officials in determining the safety adaptations required to maintain operations in any small courthouse or courtroom environment;
- help determine how many courtrooms can remain operational within a given jurisdiction, after accounting for physical distancing and other health and safety requirements;
- help determine the maximum number of occupants that each courtroom can safely accommodate at any given point in time; and
- guide officials in identifying alternative facilities when existing court spaces cannot meet public needs after accounting for health and safety measures.

The audit tool has three parts. **Part 1** defines COVID-19 transmission risks that arise in small courtroom environments, and suggests measures to help mitigate those risks, applying the **hierarchy of controls** introduced in [Orienting Principles on Safe and Accessible Courts](#).

The phased approach to risk mitigation described in Part 1 can be used to implement safety adaptations to small courtrooms. Crucially, it can also be used to inform decisions about whether operations can be maintained in small court facilities at all, and if so, at what levels of human occupancy.

Part 2 illustrates how physical distancing and other health and safety considerations can be applied to complete an inventory of useable court space within a jurisdiction. It recounts the experience of New Brunswick, where the restoration of in-person court activities is relatively advanced. While other Canadian jurisdictions have similarly completed inventories of useable court spaces, New Brunswick's experience serves as a valuable reference point for best practices. These may be relevant if future evolution in the COVID-19 pandemic – including the risk of new outbreaks – demands unforeseen court adjustments or the reversal of decisions to relax physical distancing and other measures.



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

Finally, **Part 3** offers guidance for the selection of alternative facilities where existing court spaces cannot be adapted to safe usage in response to COVID-19.

Identifying safety adaptations for small courthouses and courtrooms – and determining whether small facilities are indeed useable in light of physical distancing and other health and safety requirements – are processes that require close collaboration between court administrators and occupational health and safety experts. The guidance offered in this document is intended to complement necessary engagement between those officials, focused on developing health and safety measures that are responsive to the unique needs of their courts and communities.

Part 1: Risk Identification and Mitigation in Small Courtrooms

Since physical proximity between individuals and contact with common objects and surfaces are the primary modes of COVID-19 transmission, the concentration of individuals within small indoor spaces elevates transmission risks associated with routine activities. In the courts setting, these activities might include:

- Proximity or contact between individuals at points of entry and exit to court facilities;
- Interactions between court users and security or registry personnel;
- Congregation of individuals in waiting areas (e.g., prior to entering specific courtrooms);
- Contact with doors, chairs, railings, tables, physical elements of the witness stand, and other common or high-touch surfaces;
- Close proximity between individuals within courtrooms, whether seated in fixed locations or moving to interact with other individuals, address the court, approach the witness box, or perform some other action;
- Momentary close proximity between individuals when moving in and out of doorways, approaching the bench, traversing seating rows in the gallery, or making other routine movements;
- Handling of evidentiary exhibits, documents, or other material by multiple individuals.

Applying the hierarchy of control measures, these risks could be mitigated as follows:

Physical Distancing

- Maintain a 2 metre (6 foot) distance between people whenever possible, for example by:
 - Blocking seating in the audience;
 - Re-arranging fixed seating areas, such as those used by counsel or court officials;
 - Designating movement flows for entering and exiting courthouses and courtrooms, and for other routine activities;
 - Applying floor markings and other visual cues to reinforce physical distancing.
- Where physical distancing is impossible or impractical, consider:
 - Whether the types of proceeding conducted in the courtroom could be modified to involve occupancy by fewer people; and
 - Whether resort to an alternative facility is required.



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

Engineering Controls

- Increase ventilation to the extent possible (e.g., by opening windows), and/or change air filters frequently, and/or increase hours of operation of ventilation systems.
- Introduce plexiglass or other physical barriers to diminish transmission risks (especially where physical distancing is impossible or impractical), for example:
 - At security screening or registration points near building entrances;
 - Between fixed seating points within a courtroom, such as the witness box, judicial dais, stations for the court recorder or other personnel, audience seating and seating for counsel, etc.
- **Note:** introducing plexiglass and other barriers in small spaces can also increase the number of contact surfaces and must be cleaned thoroughly and frequently to prevent them from becoming possible sites of COVID-19 transmission. This risk must be considered in assessing whether a small space can be practically adapted for safe usage.

Administrative Controls

- Establish clear protocols for the use of facemasks during courtroom proceedings. This may involve having judges explain protocols at the outset of proceedings, and defining appropriate moments when participants can safely remove facemasks (e.g., during witness testimony).
- Plan for appropriate breaks in proceedings to allow handwashing, and ensure the availability of hand sanitizer for use immediately after handling common materials or contact with common surfaces (e.g., for witnesses upon entering and leaving the witness box).
- Train security or other personnel to conduct health screening of all persons entering the court facility.
- Clean and disinfect court facilities frequently (see [Guidance on Protecting Court Personnel and General Practices for Sanitation and Disinfecting](#)).
- Implement cleaning and disinfection protocols that clearly designate the individuals responsible for different elements of cleaning and disinfection, and related time intervals.
- Ensure that advance communication with participants in court proceedings (e.g., witness summons, notices of hearing dates) include clear instructions not to attend the courthouse in the event of recent international travel, illness, or exposure to persons with COVID-19. Provide alternatives for the rescheduling of proceedings to accommodate these cases.
- Consider the use of electronic or other alternatives to in-person court hearings, where possible.

Personal Protective Equipment (PPE)

- Provide disposable surgical facemasks for all persons upon arrival at courthouse, with clear instructions on safe application and removal.
- Provide appropriate PPE, such as face shields, to any court personnel whose responsibilities include close contact with other individuals (e.g., security personnel responsible for handling inmates or accused persons, or for conducting health screening of individuals upon entry to the court facility). Ensure that personnel receive appropriate training in the safe use of PPE, in compliance with applicable occupational health and safety laws and regulations.

Complementing Health and Safety Measures with Accountability and Human Resource Support

Appropriate health and safety adaptations must always be informed by the particular characteristics of courthouses and the needs of their surrounding communities. In addition to the types of measures described above, the Action Committee recommends that, where possible, specific court officials be designated with responsibility for the oversight and enforcement of COVID-19 related health and safety measures at each courthouse.



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

The role of these officials should be to:

- give direction to court personnel and court users on the observance of health and safety measures related to COVID-19;
- intervene where court personnel or court users are not properly observing those measures; and
- respond to COVID-19 related questions and concerns in real time.

The officials should engage directly with local health and safety authorities to establish protocols for dealing with court personnel or court users who become ill or display possible symptoms of COVID-19. They should also liaise on a continuing basis with local health and safety authorities to ensure that courthouse-level practices and policies align with local guidelines, and to implement adaptations as necessary. The identity and role of the designated official(s) should be clearly communicated to all courthouse visitors or participants in court proceedings.

Part 2: Developing an Inventory of Safe Courtrooms

Not all courthouses and courtrooms will be able to support the adaptations suggested above. Moreover, even after applying these adaptations, maintaining operations within small courthouses and courtrooms will likely require reducing their overall occupancy levels in order to support physical distancing. This will diminish the total volume of usable court space within a jurisdiction.

In order to determine how alternatives to in-person proceedings can be combined with measures to allocate necessary in-person proceedings to appropriate spaces, it has been essential for individual jurisdictions to have a strong understanding of their available inventory. More specifically, it has been critical to know which courtrooms can accommodate which types of proceeding once physical distancing and other health and safety measures are accounted for. This analysis at the courtroom level in turn helps to inform safe usage levels for courthouses as a whole.

New Brunswick's recent experience in developing such an inventory is summarized below, with the aim of documenting best practices to aid future court adaptations should these become necessary.

The New Brunswick Experience

- A critical first step in the development of New Brunswick's courtroom inventory was judicial authorization to treat all courtrooms in the province – irrespective of hierarchy or protocol – as part of **a common resource pool, to be allocated based on need**. In other words, courtrooms traditionally reserved for exclusive use by the Court of Appeal, Court of Queen's Bench, or Provincial Court were instead amalgamated into a single inventory. This allowed court officials to plan for the allocation of in-person proceedings to specific courtrooms based on the "fit" between proceedings and the characteristics of each courtroom. Proceedings involving a large number of participants could be allocated to larger courtrooms, and vice versa.
- Court officials then prepared a **ranked list of every courtroom by size**, totaling approximately 60 courtrooms for the entire province. One courts administration official, accompanied by a health and safety expert, inspected each courtroom and made note of their distinct physical features. While such an approach may not be feasible in larger jurisdictions, it ensured that a consistent perspective and approach was applied to the assessment of each courtroom. There may be other methods of ensuring such consistency (for example, by making one individual responsible for the assembly of information into a single inventory, and for ensuring that courthouse-level officials gather and report information according to common definitions and principles).
- Based on this initial inspection of the courtrooms, officials were able to broadly classify **two common elements** in every courtroom:
 - **fixed seating**, meaning stations in the courtroom that were used by counsel, witnesses, judges, court officials, security personnel, or any other persons officially involved in the conduct of courtroom proceedings; and
 - **the gallery**, meaning the public seating area reserved for observers.



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

- These elements, taken together, provided an indication of the **total occupancy level** of each courtroom.
- Applying health and safety guidance issued by provincial and federal authorities, officials **physically audited each courtroom** to identify measures that would be required to maintain a distance of 2 metres (6 feet) between all occupants. This process involved multiple iterations. Officials would physically measure the distance between seats and other objects within the courtroom.
- The decision was made in advance that extensive or time-consuming renovations would not be attempted at this stage. Rather, officials relocated movable furniture and fixtures to the extent possible, and applied floor markings and other visual cues to reinforce physical distancing and anticipated pathways for physical movement. Officials **prioritized physical distancing** at this stage, and did not attempt to introduce additional control measures to any courtroom. This allowed them to **eliminate a small number of courtrooms** that could not accommodate appropriate physical distancing under any circumstances.
- After completing the physical audit, officials were able to revise the total number of properly distanced spaces available within the **fixed seating** and **gallery** sections of each courtroom. This served as an initial estimate of the **maximum safe occupancy level** for each courtroom, accounting for physical distancing requirements.
- Officials then selected **two representative courtrooms in which to conduct simulated trials**. One courtroom was selected in a modern courthouse, with physical characteristics resembling approximately 75% of all courtrooms in the province. The second courtroom was selected to represent a typical small hearing space for a family law matter.
- An **occupational health and safety expert** was retained to observe simulated trials in both courtrooms. The same expert who assisted earlier in the physical inspection of courtrooms was used again at this stage, and was responsible for observing both simulated trials. This helped lend consistency to the guidance being developed.
- Judges, counsel, sheriffs, court recorders, clerks, and other courtroom officials all participated in the simulated trials, which were based on the records of actual proceedings. Court officials volunteered to serve as witnesses and as members of the audience. By observing the simulated proceedings, the occupational health and safety consultant was able to observe **common touch points on physical surfaces and documents (such as exhibits); moments of close physical proximity between individuals; and other transmission risks that had not previously been identified**.
- Simulations also accounted for rare but potential events, such as an emergency that required the courtroom to be cleared. Observations at each stage were used to inform further adaptations to the courtrooms, including changes to prescribed movement patterns; relocation of seating and other objects; and **selective introduction of additional control measures**, such as plexiglass barriers and the use of facemasks. At each step, officials took the least invasive step that would still mitigate the identified risk.
- The maximum number of safe occupants for each courtroom in the provincial inventory was then adjusted a final time, using information gained through the trial simulations. This information was again broken down by the number of safely-distanced spaces available within the fixed seating and gallery sections of every courtroom.
- Courts administrators now had working inventory of the **maximum number of safe occupants for each courtroom**, broken down by **participants in court processes** (spaces available in fixed seating) and **observers** (spaces available in the gallery).
- This inventory can be used to:
 - Inform the allocation of proceedings to specific courtrooms, based on the number of participants;
 - Plan for staged access to individual courtrooms by multiple participants in proceedings (such as witnesses); and
 - Plan for the regulation of access to the gallery in each courtroom (e.g., by family members of litigants, media, or other public observers).

Notably, because New Brunswick's approach to auditing its court facilities involved the application of a phased approach to risk mitigation (beginning with physical distancing, and progressing to additional control measures through the trial simulation phase), officials were able to identify and begin implementing health and safety adaptations within courtrooms at the same time as they completed a functional inventory of useable court facilities. In other words, the auditing of provincial court facilities and adaptation for safe operations were able to proceed hand-in-hand. Completion of the auditing process also gave critical reassurance to the public regarding the safety of New Brunswick's court facilities.



Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities

Part 3: Identifying Alternative Facilities for Court Proceedings

Physical distancing and other health and safety measures inevitably diminish the total volume of court spaces that can be used in a jurisdiction at any one time. Certain types of court proceeding, such as jury trials and trials involving multiple parties, may be unfeasible using existing facilities. In some cases, communities may be left without operative courthouses, introducing serious access to justice concerns.

Many jurisdictions across Canada have thus relocated court proceedings to temporary facilities, such as convention centres, hotels, churches, and sports complexes, where appropriate health and safety measures can be observed. Use of these facilities by the courts can provide stable tenancy to community resources that have faced suspension of their ordinary activities due to the pandemic.

The selection of alternative facilities should always be driven by local considerations, including the epidemiology of affected communities and their distinct needs in relation to the administration of justice. Alternative facilities should be:

- **Capable of accommodating physical distancing and other health and safety adaptations** (of the type described in Part 1 and in the Action Committee's [Orienting Principles on Safe and Accessible Courts](#));
- **Capable of meeting courthouse operational needs**, including administrative processes, technological fittings, security, and human resource requirements; and
- **Accessible to the communities they serve**, meaning that the facilities should not present undue obstacles or burdens for those seeking access to the courts, and should comply with legal and regulatory requirements related to physical accessibility.

Accounting for these requirements, the Action Committee recommends the following **key considerations** to guide local decision-makers in selecting alternative court facilities:

- **Engagement of local public health authorities** should be foundational to any process of identifying alternative facilities. Those authorities will provide critical insight on local COVID-19 infection rates, community risks, and health needs. Ongoing engagement and collaboration with local health authorities can help to ensure the appropriate selection, adaptation, and operation of facilities.
- The selection of facilities should be informed by **close collaboration between the judiciary, courts administrators, and court security providers**, who together offer key operational perspectives on facility needs.
- The **local knowledge of these officials** should be employed to help identify facilities appropriate for the communities in which they serve. These individuals can impart valuable knowledge of community needs and circumstances, and serve as appropriate points of contact for engagement with community leaders and representatives as needed. Specifically:
 - **Judges** can offer key insights on the types of proceeding common to their communities, the related needs of litigants, accused persons and counsel, and other operational requirements. The latter may include the needs of staff working under judicial supervision, judicial office needs, security considerations, and judicial preferences regarding court protocols.
 - **Local courts administration officials** are best placed to assess the accessibility of proposed facilities, including the suitability of facilities to community needs related to language, cultural practices, physical proximity, and other considerations. They are also best placed to determine the adequacy (or adaptability) of facilities to technological, human resource, and administrative requirements.
 - **Security officials** (which may include sheriffs, police, or other security providers, depending on the individual court) can provide insight on the security requirements needed for local court proceedings, including secure means of access and exit for judges, court personnel, court users and others; secure means of transporting inmates or accused persons into and out of the facility; and regulation of facility entries and exits, internal security and security of the general court vicinity.
- Ideally, these officials should be directly involved in suggesting, evaluating, touring, and planning for the adaptation of proposed facilities. Their collaboration and engagement with one another – and with local community members and health and safety authorities – complements the public interest, as expressed in the Action Committee's [Core Principles and Perspectives](#).