



Department of Justice
Canada

Ministère de la Justice
Canada

FOR APPROVAL

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**TITRE/TITLE: Association of Justice Counsel Letter to Ministers and Dr. Tam
on the Reopening of Federal Courts**

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- On August 19, 2020, the Association of Justice Counsel (AJC) wrote a letter to The Honourable David Lametti, Minister of Justice and Attorney General of Canada, The Honourable Jean-Yves Duclos, President of the Treasury Board, The Honourable Anita Anand, Minister of Public Services and Procurement Canada, The Honourable Patty Hajdu, Minister of Health as well as Dr. Theresa Tam, Chief Public Health Officer, Public Health Agency of Canada expressing their concerns regarding the Courts Administration Service (CAS) *Resuming In-Person Court Operations Guide* (CAS Guide) (Annex 1).
- The Department of Justice (JUS) has coordinated consultation with the Treasury Board Secretariat, Health Canada, the Public Health Agency of Canada, Public Services and Procurement Canada, and the Courts Administration Service in order to prepare a proposed consolidated response to the AJC's letter (Annex 2).
- It is proposed that the Deputy Minister of Justice and Deputy Attorney General of Canada responds on behalf of the Ministers and Dr. Tam to address the concerns raised in the AJC correspondence.

Approbation/signature du ministre demandée pour le/Minister's signature/approval requested by:

September 30, 2020

Soumis par (secteur)/Submitted by (Sector):

Management Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Catherine Rudick

Revue dans l'ULM par/Edited in the MLU by:

Paige Kedrosky

Date préparée par secteur/Date Prepared by Sector: September 11, 2020

Date soumise au BSM/Date Submitted to DMO: September 14, 2020

Date soumise au CM/Date Submitted to MO: September 25, 2020

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2020-008513

MEMORANDUM FOR THE MINISTER

Association of Justice Counsel Letter to Ministers and Dr. Tam on the Reopening of Federal Courts

ISSUE

On August 19, 2020, the Association of Justice Counsel (AJC) wrote a letter to The Honourable David Lametti, Minister of Justice and Attorney General of Canada, The Honourable Jean-Yves Duclos, President of the Treasury Board, The Honourable Anita Anand, Minister of Public Services and Procurement Canada, The Honourable Patty Hajdu, Minister of Health as well as Dr. Theresa Tam, Chief Public Health Officer, Public Health Agency of Canada expressing their concerns regarding the Courts Administration Service (CAS) *Resuming In-Person Court Operations Guide* (CAS Guide).

BACKGROUND

The AJC is the bargaining agent organization that represents approximately 2,600 lawyers and prosecutors who work for the federal government.

In their August 19, 2020, letter to the Ministers and Dr. Tam, the AJC expressed concerns that the CAS Guide may not provide for adequate health and safety protocols for the resumption of in-person hearings. Specifically, the AJC is of the opinion that the CAS Guide does not maximize the use of virtual hearings as a default; it does not require the wearing of non-medical masks at all times in courts; and the AJC questions the adequacy of the heating, ventilation and air conditioning (HVAC) systems in those premises in light of COVID-19.

The AJC was consulted by the CAS and had the opportunity to review and provide comments on the CAS Guide. The CAS did consider the AJC feedback before finalising its guide, and is of the view that its guide complies with all guidance issued by the Treasury Board Secretariat as well as Health Canada and the Public Health Agency of Canada.

The Department of Justice Canada (JUS), in order to ensure the optimal health and safety of its employees who are required to work in third party premises, including the courts, engaged with the AJC through its membership on internal departmental health and safety committees to co-develop guidance for employees entitled "*Occupational Health and Safety Tips: Working at Third-Party Premises*" as well as "*Direction on Health and Safety Protocol Breaches in Court*". In addition to these measures, Justice has also implemented proactive steps such as providing employees required to attend at third party premises with non-medical masks, travel hand-sanitizer and protocols if they are required to handle documents.

CONSIDERATIONS

In preparing the draft response to the AJC, the Department of Justice has coordinated consultation with the various stakeholders involved in order address the concerns raised by the AJC. Specifically, Justice consulted with:

- The Deputy Chief Administrator for CAS regarding the CAS Guide and its guidance;
- The Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer regarding occupational health and safety guidance provided to all federal public sector departments;
- Health Canada (Assistant Deputy Minister, Corporate Services Branch) and the Public Health Agency of Canada (A/Vice President Emergency Management) regarding the current medical and scientific guidance provided to all Canadians and specifically to the federal public sector departments;
- Public Services and Procurement Canada (Technical Services and Property Facility Management, Real Property Services Branch) for guidance regarding the HVAC systems capabilities and recommendations within federal buildings. To note, Public Services and Procurement Canada obtained the approval of their feedback and comments from the Office of The Honourable Anita Anand, Minister of Public Services and Procurement Canada.
- Within JUS, the Assistant Deputy Attorney General, National Litigation Sector; Public Law and Legislative Services Sector and members of the Action Committee on Court Operations in Response to COVID-19; as well as the Justice Centre for Labour and Employment Law were all consulted and provided comments and feedback.

All comments and feedback received from these partners were incorporated into the draft response to the AJC.

RECOMMENDATION

As the AJC represents federal public sector counsel who are mostly employed with JUS, it is recommended that the Deputy Minister of Justice and Deputy Attorney General of Canada responds on behalf of all stakeholders to the concerns raised in the AJC correspondence dated August 19, 2020. The proposed response is attached as Annex 2.

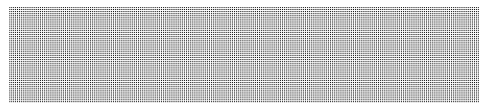
ANNEXES

Annex 1: AJC letter to Ministers on the re-opening of Federal Courts dated August 19, 2020
Annex 2: Proposed draft response

PREPARED BY

Shannon G. Ross
Senior Director, Labour Relations
and Compensation
Management Sector

**I CONCUR.****I DO NOT CONCUR.****OTHER INSTRUCTIONS:**



The Honourable David Lametti

September 29, 2020
Date

ANNEX 1

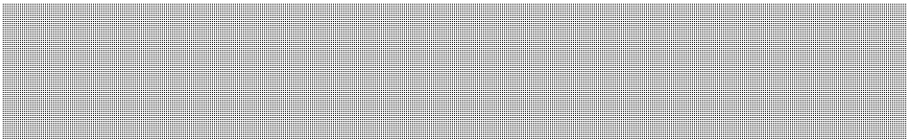
Ministerial Correspondence Unit - Justice Canada

MCU #:	R20-007918
Subject:	180001
Summary Report Att.	

From: [REDACTED]@ajc-ajj.ca>
Sent: August 20, 2020 9:34 AM
To: Ministerial Correspondence Unit - Justice Canada; president@tbs-sct.gc.ca; minister@pwgsc.gc.ca; hcminister.ministresc@canada.ca; drtheresa.tam@canada.ca; marc.noel@fca-caf.ca; cs_reception_cs@cas-satj.gc.ca; paul.Crampton@fct-cf.ca; eugene.rossiter@tcc-cci.gc.ca; daniel.gosselin@cas-satj.gc.ca
Cc: [REDACTED]
Subject: Lettre du président, Association des juristes de Justice | Letter from the President, Association of Justice Counsel
Attachments: AJC Letter to Ministers (federal courts reopening) 19 Aug 20.pdf

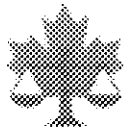
Prière de confirmer réception de la lettre en annexe. | Please confirm receipt of the attached letter.

Cordialement,



300-2725, promenade Queensview Drive
Ottawa (Ontario)
K2B 0A1

(613) 798-9900, [REDACTED]



AJC-AJJ
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August 19, 2020

Hon. David Lametti
Minister of Justice and Attorney
General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Hon. Jean-Yves Duclos
President of the Treasury Board
90 Elgin Street
Ottawa, Ontario
K1A 0R5

Hon. Anita Anand
Minister of Public Services and
Procurement Canada
Public Services and Procurement Canada
11 Laurier St., Phase III, Place du Portage
Gatineau, Quebec
K1A 0S5

Hon. Patty Hajdu
Minister of Health
Health Canada
Address Locator 0900C2
Ottawa, Ontario
K1A 0K9

Dr. Theresa Tam
Chief Public Health Officer
Public Health Agency of Canada
785 Carling Avenue, 3rd Floor
Ottawa, Ontario
K1A 0K9

Dear Ministers and Dr. Tam:

RE: REOPENING OF FEDERAL COURTS

In my capacity as President of the Association of Justice Counsel, I am writing to express my concerns about the inadequacy of health and safety protocols in place for the reopening of federal courts and the resumption of in-person hearings. We are seeking your intervention within your respective areas of responsibility to address our concerns.

The Association of Justice Counsel (AJC) is the union representing 2,600 of Canada's Crown counsel and federal prosecutors working for the Department of Justice Canada, Public Prosecution Service of Canada, and independent federal agencies/tribunals. Our members appear in all levels of federal courts and tribunals, and many of them have personal circumstances which put them or their family members at risk for complications in the event of infection with COVID-19. Accordingly, they are very concerned that adequate health and safety protocols are in place for the reopening of federal courts/tribunals and the resumption of in-person hearings.

The AJC had the opportunity to comment on drafts of the federal courts reopening plan/guide prepared by the Courts Administration Service, the last version of which was entitled *COVID-19: Recommended Preventive Measures – Resuming In-Person Court Operations* (July 2020). Our comments are set forth in the attached email string between the AJC and the Courts Administration Service. The last communication from the Courts Administration Service on July 29, 2020, failed to address our concerns and indicated little willingness to do so.

Our key concern is that the federal courts reopening plan/guide does not comply with the "precautionary principle," a central occupational health and safety recommendation of the Ontario Commission of Inquiry which examined the handling of the Severe Acute Respiratory Syndrome (SARS) epidemic in Ontario in 2003. The precautionary principle has become a fundamental aspect of occupational health and safety. Indeed, the precautionary principle was cited with approval in the recent decision of the Ontario Superior Court in *Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467 at paras. 77-78.

The precautionary principle means that where a risk to health and safety is reasonably suspected but has not yet been established as a scientific or medical certainty, reasonable measures must nonetheless be taken to reduce that risk. Stated another way, it would be contrary to the precautionary principle to decline to take reasonable measures to reduce a suspected risk to health or safety on the basis that the risk has not yet been established as a scientific or medical certainty. Compliance with the precautionary principle is particularly

important in the case of a virulent new disease, such as COVID-19, where the medical and scientific consensus is rapidly evolving.

There is a growing body of evidence that, in our view, leads to a strong suspicion that COVID-19 is transmitted by aerosol means, especially in enclosed spaces. In other words, there is very clear evidence to raise a reasonable suspicion that COVID-19 is transmitted by small particles which remain suspended in the air for extended periods of time. In our email, we drew the attention of the Courts Administration Service to many of these reports, and more have emerged in recent weeks.

In the case of federal courts, one simple and very reasonable measure to reduce the risk of aerosol transmission of COVID-19 is to make the wearing of masks mandatory at all times. This is what the AJC recommended. However, the Courts Administration Service has failed to require this simple measure, pointing out that the Public Health Agency of Canada had "approved" the federal courts reopening plan/guide and specifically citing the Agency's position that the evidence is incomplete for definitively concluding that COVID-19 is transmitted by airborne (aerosol) means. In our view, this justification is entirely contrary to the precautionary principle.

As matters presently stand, people cannot enter a grocery store without wearing a mask at all times, but they can enter a federal courthouse or courtroom and remain – perhaps for hours – in a small enclosed space without wearing a mask. In our view, this situation places all court participants at risk and puts the federal administration of justice in a very poor light – particularly, in comparison to many provincial courts where the wearing of masks is mandatory subject to limited exceptions (e.g., Ontario). This situation should be of concern to the Minister of Justice who has statutory responsibility for the administration of justice in Canada.

Compliance with reasonable health and safety protocols in federal courthouses and courtrooms in no way infringes on the independence of the courts or the judiciary. The proper administration of justice requires reasonable health and safety measures to be followed. To suggest otherwise would tarnish the administration of justice and judicial independence by implying that courts are free to conduct proceedings, such as in-person hearings, in a manner that is not safe or healthy, thereby putting the health of all participants including judges themselves at risk.

In our July 23rd submissions to the Courts Administration Service, the AJC raised a list of concerns which require attention. All of those items are important and still require action. We call on all of you to take appropriate measures within your respective areas of responsibility to address our concerns. That said, we feel that the following items require immediate attention:

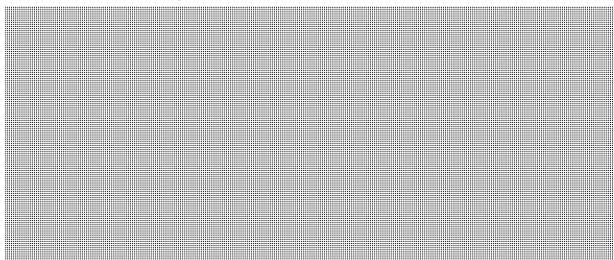
1. **Masks:** The federal courts reopening plan/guide needs to be amended immediately to make masks mandatory at all times in federal courthouses and courtrooms. This change is required by the precautionary principle to protect the health and safety of all justice participants. We trust that the Minister of Justice would agree that such a change would be in the best interests of the administration of justice, and we call on the Courts Administration Service to make this change as soon as possible.
2. **Ventilation/HVAC and Risk Assessments:** The AJC raised a number of concerns with respect to ventilation/HVAC and the transmission of COVID-19. These concerns were not answered by the Courts Administration Service which pointed out that Public Services and Procurement Canada (PSPC) is responsible for these matters and simply referred us to guidance published by PSPC. The PSPC guidance did not answer our questions. We would ask that PSPC specifically provide the information requested in our July 23rd submission to the Courts Administration Service for all federal courthouses and facilities where federal court proceedings are conducted. We are seeking assurance from PSPC that the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) recommendations regarding COVID-19 have been implemented for federal court facilities. We were also advised by the Courts Administration Service that risk assessments of all federal court facilities have been conducted. We ask that the PSPC or Courts Administration Service provide us with these risk assessments as soon as possible.
3. **Procedures for Healthy and Safe In-Person Hearings:** In the AJC's view, the simplest way to protect the health and safety of justice participants is to maximize the use of virtual hearings and minimize the use of in-person hearings unless absolutely necessary. That said, where in-person hearings in federal courts are absolutely necessary, there should be clear and detailed procedures for conducting such hearings in a safe and healthy manner. We sincerely hope that the Chief Justices of federal courts and the Courts Administration Service consider the adoption of such procedures by means of practice directions, changes to rules of procedure, or amendments to the reopening plan/guide.
4. **Occupational Health and Safety:** We respect the expertise of Health Canada and the Public Health Agency of Canada on matters of public health. That said, we are concerned that the public health advice being provided to departments is not also being viewed through the occupational health and safety lens, and in particular is not being considered in conjunction with the precautionary principle. Had this been done, it seems inevitable to us that the mandatory wearing of masks at all times in federal courthouses and courtrooms would have been embraced as a simple and reasonable measure to reduce the potential risk of the aerosol transmission of COVID-19. We ask our public health authorities to craft their advice with the precautionary principle in

mind and point out to departments where measures to reduce health and safety risks should be considered, even if the risk has not been established to a medical or scientific certainty.

5. **Healthy and Safe Workplaces:** Federal courts and tribunals are not just places where justice is dispensed, they are workplaces for our members. Employers have a legal responsibility to ensure that workplaces are healthy and safe. Similarly, employees may refuse to work where the conditions are not safe or healthy, and an occupational health and safety investigation must follow. While our members appreciate the support provided by the Department of Justice and Public Prosecution Service of Canada policies regarding the breach of COVID-19 health and safety protocols in courts, these policies are not enough. Our employer, the Treasury Board of Canada, must ensure that federal courts and tribunals are healthy and safe workplaces for our members.

We appreciate your attention and hope that you share our concern for the health and safety of our members, courthouse personnel and members of the Canadian public in federal courts. We look forward to discussing these issues with you at your earliest convenience.

Yours truly,



c.c. Chief Justice Marc Noël, Federal Court of Appeal, Ottawa, Ontario

Chief Justice B. Richard Bell, Court Martial Appeal Court of Canada, Ottawa, Ontario

Chief Justice Crampton, Federal Court of Canada, Ottawa, Ontario

Chief Justice Rossiter, Tax Court of Canada, Ottawa, Ontario

Daniel Gosselin, Chief Administrator, Courts Administration Service, Ottawa, Ontario



@ajc-ajj.com>

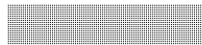
RE: AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN

1 message

Carbonneau, Chantal <Chantal.Carbonneau@cas-satj.gc.ca>

Wed, Jul 29, 2020 at 5:45 PM

To: [REDACTED] <[REDACTED]@ajc-ajj.com>, "Gosselin, Daniel" <Daniel.Gosselin@cas-satj.gc.ca>
 Cc: "Kroll, Bill" <Bill.Kroll@justice.gc.ca>, "Lovett, Lynn" <Lynn.Lovett@justice.gc.ca>, "Dagenais, Martine" <Martine.Dagenais@justice.gc.ca>, "Ross, Shannon" <Shannon.Ross@justice.gc.ca>, "Lawrence, Catherine" <Catherine.Lawrence@justice.gc.ca>, "Zaluski, Stephen" <Stephen.Zaluski@justice.gc.ca>, "Cote, Francine" <Francine.Cote@cas-satj.gc.ca>, "Blondeau, Anny" <Anny.Blondeau@justice.gc.ca>, "Lefebvre, Vicky" <Vicky.Lefebvre@cas-satj.gc.ca>



Thank you for your email of July 23, 2020.

We have reviewed your comments and would like to confirm the following:

We maintain our position that the preventing measures that we put in place for the resumption of in-person court operations ensure the health and safety of all Court attendees. As mentioned, our measures were approved by Public Health Agency of Canada.

We will continue to monitor the situation and will adjust our measures if necessary in accordance with the guidance of Health Canada.

With respect to your questions about the ventilation/HVAC, please refer to the Building management direction for coronavirus disease 2019 (COVID-19) published by PSPC on June 22, 2020 which provides detailed information on the measures put in place for HVAC systems.

If members of the AJC have concerns about the resumption of in-person court operations, we suggest that they contact their employer to discuss them.

Best regards,

Chantal Carbonneau

National Champion, CAS Mental Health Strategy / Championne nationale, Stratégie de la santé mentale du SATJ

Deputy Chief Administrator / Administrateur en chef adjoint
 Judicial and Registry Services / Services judiciaires et du greffe
 Courts Administration Service / Service administratif des tribunaux judiciaires

JUS A-2020-00636-00012

90 Sparks, Ottawa (Ontario) K1A 0H9
Tel: 613-943-3458
Fax: 613-947-4086

s.19(1)

From: [REDACTED]@ajc-ajj.com>

Sent: July 23, 2020 7:34 PM

To: Gosselin, Daniel <Daniel.Gosselin@cas-satj.gc.ca>

Cc: Kroll, Bill <Bill.Kroll@justice.gc.ca>; Lovett, Lynn <Lynn.Lovett@justice.gc.ca>; Dagenais, Martine <Martine.Dagenais@justice.gc.ca>; Ross, Shannon <Shannon.Ross@justice.gc.ca>; Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>; Zaluski, Stephen <Stephen.Zaluski@justice.gc.ca>; Cote, Francine <Francine.Cote@cas-satj.gc.ca>; Blondeau, Anny <Anny.Blondeau@justice.gc.ca>; Carbonneau, Chantal <Chantal.Carbonneau@cas-satj.gc.ca>; Lefebvre, Vicky <Vicky.Lefebvre@cas-satj.gc.ca>

Subject: Re: AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN

Mr. Gosselin:

Here are our comments.

Consultation

The AJC has reviewed the document entitled *COVID-19: Recommended Preventive Measures – Resuming In-Person Court Operations* (16 July 2020) (the “Guide”) which was provided to us on Thursday, July 16, 2020, at 7:26 pm – effectively providing us with one business day to review the document and provide our feedback prior the scheduled resumption of in-person Federal Court operations on Monday, July 20th. The previous version of this document which we reviewed and commented upon was entitled *COVID-19: Recommended Preventive Measures – Resuming Court Operations in Work Sites* (28 May 2020).

Let me say that the AJC understands that the CAS and others have been working very hard and under significant time pressures to get a finalized plan in place prior to the reopening of Federal Courts. We acknowledge and appreciate your work. That being said, we firmly believe that the better course of action would have been to finalize the Guide before scheduling a date for reopening. This would have allowed for meaningful, effective and timely consultation.

We still have concerns about the Guide. Regrettably, we were left with little time to review the plan, communicate our concerns, have you consider those concerns, and then potentially revise the plan. We understand your view that the Guide is an “evergreen” document, and one that will be iterative and responsive. Based on the concerns expressed below, we believe there is more work to be done.

Precautionary Principle

As you know, in our Guiding Principle #4 we advocate that the “precautionary principle” should be applied to ensure that reasonable measures are taken to protect health and safety in the context of the reopening of courts during the COVID-19 pandemic. In our view, the Federal Courts reopening plan has fallen short in this area.

In 2003 Ontario suffered through the Severe Acute Respiratory Syndrome (SARS) epidemic which killed 44 and infected 330 others. The Province of Ontario ordered a public inquiry into the matter which completed its work in December 2006. At p. 24 of *The SARS Commission Executive Summary (Spring of Fear)* (<https://collections.ola.org/mon/16000/268478.pdf>), Justice Archie Campbell highlighted the "precautionary principle" as the guiding principle for public health and the safety of workers:

Perhaps the most important lesson of SARS is the importance of the precautionary principle. SARS demonstrated over and over the importance of the principle that we cannot wait for scientific certainty before we take reasonable steps to reduce risk. This principle should be adopted as a guiding principle throughout Ontario's health, public health and worker safety systems.

If we do not learn this and other lessons of SARS, and if we do not make present governments fix the problems that remain, we will leave a bitter legacy for those who died, those who fell ill and those who suffered so much. And we will pay a terrible price in the face of future outbreaks of virulent disease, whether in the form of foreseen outbreaks like flu pandemics or unforeseen ones, as SARS was.

It is our understanding that the precautionary principle has been adopted as a foundational principle for occupational health and safety. In our view, COVID-19 is the very type of virulent disease and unforeseen pandemic that Justice Campbell had in mind when he wrote the passage above.

The precautionary principle was cited with approval in the April 2020 decision of the Ontario Superior Court of Justice in *Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467 at paras. 77-78 (<https://www.canlii.org/en/on/onsc/doc/2020/2020onsc2467/2020onsc2467.html?autocompleteStr=2020%20ONSC%202467&autocompletePos=1>). In that case, the Court ordered the named long-term care facilities to provide working nurses with N95 facial respirators and other personal protective equipment (PPE) when appropriate and required.

It is the AJC's position that the precautionary principle means that where a risk to health and safety is reasonably suspected but has not yet been established as a scientific or medical certainty, reasonable measures must still be taken to reduce that risk. Stated another way, it would be contrary to the precautionary principle to decline to take reasonable measures to reduce a suspected risk to health or safety on the basis that the risk has not yet been established as a scientific or medical certainty.

Resumption of In-Person Hearings

In your email you state that the decision with respect to whether hearings will be conducted remotely or in person is a prerogative of the Courts served by the CAS.

In the context of a pandemic, we believe that it needs to be clearly understood that this general principle is subject to limitations including this one: "The prerogative of Courts to determine whether hearings will be conducted in-person is subject to the proviso that in-person hearings are not to be held in circumstances where they present an unreasonable risk to the health or safety of persons. In making such a determination, Courts should apply the precautionary principle and not hold in-person hearings if that is a reasonable measure to reduce the risk to health and safety – particularly where a risk to health and safety is reasonably suspected but has not yet been established as a scientific or medical certainty."

Furthermore, I would point out that under the Canada Labour Code workers have the right to refuse work that is an unreasonable risk to their health or safety.

It is unclear to us that Federal Courts are applying the precautionary principle when considering whether to conduct in-person hearings. Therefore, it remains a live issue as to whether our members may need to refuse to work at courthouses because of an unreasonable risk to their health or safety.

Airborne (Aerosol) Transmission of COVID-19

In the AJC's view, the potential for the airborne (aerosol) transmission of the COVID-19 virus in an enclosed spaces, such as courthouses and courtrooms, is the very health and safety risk to which the precautionary principle should apply. Indeed, the risk of COVID-19 transmission exists in these circumstances even where physical distancing is maintained.

Your email states, "PHAC [Public Health Agency of Canada] considers COVID-19 to be primarily droplet transmission and that current evidence is incomplete for definitively concluding on the airborne transmission of COVID-19." This is the very type of reasoning that the precautionary principle warns against.

There is copious evidence to reasonably suspect that COVID-19 is transmitted by airborne means and to require reasonable measures to reduce the risk:

- The World Health Organization (WHO) recently changed its view on the aerosol transmission of COVID-19 (<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted>) with this statement:

Some medical procedures can produce very small droplets (called aerosolized droplet nuclei or aerosols) that are able to stay suspended in the air for longer periods of time. When such medical procedures are conducted on people infected with COVID-19 in health facilities, these aerosols can contain the COVID-19 virus. These aerosols may potentially be inhaled by others if they are not wearing appropriate personal protective equipment. Therefore, it is essential that all health workers performing these medical procedures take specific airborne protection measures, including using appropriate personal protective equipment. Visitors should not be permitted in areas where such medical procedures are being performed.

There have been reported outbreaks of COVID-19 in some closed settings, such as restaurants, nightclubs, places of worship or places of work where people may be shouting, talking, or singing. In these outbreaks, aerosol transmission, particularly in these indoor locations where there are crowded and inadequately ventilated spaces where infected persons spend long periods of time with others, cannot be ruled out. More studies are urgently needed to investigate such instances and assess their significance for transmission of COVID-19."

- The top U.S. infectious disease expert, Dr. Anthony Fauci, said July 10th that the aerosol transmission of the coronavirus is "likely" to some degree (<https://thehill.com/changing-america/well-being/prevention-cures/506793-aerosol-transmission-of-coronavirus-likely-to>).
- A group of 239 scientists recently published a letter urging the WHO to be more forthcoming about the potential for the aerosol transmission of COVID-19 (<https://www.pbs.org/newshour/health/aerosols-may-play-a-larger-role-in-covid-19-transmission-than-previously-thought>).
- Media reported that 53 (87%) of 61 people who attended a choir practice for two and a half hours were infected with COVID-19. Two died. (<https://www.cnn.com/2020/05/13/us/coronavirus-washington-choir-outbreak-tmd/index.html>).
- According to an article published by the National Academy of Sciences, speech droplets are increasingly considered to be a likely mode of transmission of COVID-19. According to the authors, "... normal speech generates airborne droplets that can remain suspended for tens of minutes or longer and are eminently capable of transmitting disease in confined spaces." (<https://www.pnas.org/content/117/22/11875>)
- A recently released scientific study, "The Infectious Nature of Patient Generated SARS-CoV-2 Aerosol," though not yet peer-reviewed, concluded, "Given the infectious nature of aerosol collected in this study, taken with the other lines of evidence presented, further suggests that airborne transmission of COVID-19 is possible, and that aerosol prevention measures should be implemented to effectively stem the spread of SARS-CoV-2, particularly in crowded settings." (<https://www.medrxiv.org/content/10.1101/2020.07.13.20041632v2>)
- The American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) concluded in its *Position Document on Infectious Aerosols* (April 14, 2020) that, "Transmission of SARS-CoV-2 through the air is sufficiently likely that airborne exposure to the virus should be controlled. Changes to building operations, including the operation of heating, ventilating, and air-conditioning systems, can reduce airborne exposures." ASHRAE also stated, "Ventilation and filtration provided by heating, ventilating, and air-conditioning systems can reduce the airborne concentration of SARS-CoV-2 and thus the risk of transmission through the air." (https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf)

Accordingly, the AJC's position is that reasonable measures must be taken to reduce the risk of airborne transmission of the COVID-19 virus to courthouse workers and attendees.

Next Steps

In accordance with your position that the Guide is an evergreen document which will be iterative and responsive, it is the AJC's position that adjustments need to be made in the following areas:

1. **Masks:** The wearing of masks must be mandatory at all times for everyone inside the courthouses and in particular inside the confined spaces of courtrooms – not just when physical distancing cannot be maintained. As discussed above, there is a reasonable suspicion that COVID-19 is transmitted by airborne (aerosol) means – even if this has not yet been established as a scientific or medical certainty. The risk appears to be particularly acute where people are inside, in confined spaces, and are speaking loudly. These are the circumstances one clearly finds in a courtroom. The precautionary principle requires reasonable measures to be taken to reduce the risk, and the obvious reasonable measure that must be taken is the wearing of masks at all times in a courthouse and a courtroom. Indeed, the AJC notes that in many

jurisdictions one must wear a mask to enter a grocery store or other place of business. It makes no sense that one could be in a Federal courthouse or courtroom and remain – perhaps for hours on end – without wearing a mask.

2. **Ventilation/HVAC:** In your email, you mentioned that all CAS facilities and courthouses (with the exception of a Halifax courtroom) are managed by PSPC. You also outlined the measures being taken with respect to ventilation/HVAC. These are certainly positive steps and are to be commended. In addition, you said that the ventilation/HVAC adjustments are consistent with updated recommendations on COVID-19 from the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE). As you know, ASHRAE has issued a *Position Document on Infectious Aerosols* (April 14, 2020) (https://www.ashrae.org/file%20library/about/position%20documents/pd_infectiousaerosols_2020.pdf). ASHRAE has also offered a broad range of COVID-19 preparedness resources (<https://www.ashrae.org/technical-resources/resources>). It's unclear to us what ASHRAE recommendations are being followed. Some specific questions are as follows: (a) You stated that the hours of operation of HVAC systems have been increased, but it is unclear to what extent they have been increased. Are HVAC systems being operated 24/7 or just a couple of extra hours per day? This has a bearing on the air replacement in the courthouse. Please provide us with these particulars for each courthouse facility. (b) Is the outdoor airflow set to 100% as recommended by ASHRAE? (c) Has there been an HVAC assessment for each courthouse facility? If so, we would like copies of those assessments. This was a request made in our initial round of comments. (d) ASHRAE recommends MERV 13 filters but prefers MERV 14 filters (<https://www.ashrae.org/technical-resources/filtration-disinfection#mechanical>). Are MERV 13 or 14 filters being used at all CAS courtroom facilities? Are any additional filtration measures such as HEPA filters, UV lights or other filtration systems being used? (e) What steps have been taken to ensure that there is no cross-contamination between washroom exhaust air and ventilation airflow, as cautioned by ASHRAE (<https://www.ashrae.org/technical-resources/filtration-disinfection#special>)?

3. **Procedures for Healthy and Safe In-Person Hearings:** In our original comments, we raised concerns about procedures for conducting in-person hearings in a healthy and safe manner (e.g., examination/cross-examination of witnesses, handling of exhibits and documents, use of digitized documents, etc.). We recommended that your guide cover these issues and set forth procedures for conducting in-person hearings in a healthy and safe manner. We also recommended that Federal courts and tribunals assess their rules to determine how in-person proceedings can be conducted in a healthy and safe manner. We appreciate that your Guide (p. 7) very briefly addresses document handling in the courtroom. However, there has been very little change from the previous version of the Guide, except to say that those handling documents will use hand sanitizer rather than gloves. We believe that the important issue of procedures for healthy and safe in-person hearings needs to be addressed either in your Guide or in the rules of courts or tribunals (e.g., through changes to court/tribunal rules or the issuance of practice directions). We have been unable to find any rule changes or practice directions from federal courts/tribunals which have addressed the procedures for conducting in-person hearings in a healthy and safe manner – including the issues we have raised above. Of course, the very best practice would be to continue to conduct hearings by remote/virtual means, except where there is a compelling reason not to do so and an in-person hearing is absolutely essential. We suggest again that a bullet to this effect be added to Guide. Indeed, we advocate that Federal courts and tribunals adopt an approach similar to the Ontario Superior Court of Justice which urges judicial officers to be flexible, to respect the various reasons why a person may not wish to attend a courthouse for an in-person hearing, and to give consideration to virtual hearings when requested

(<https://www.ontariocourts.ca/scj/notice-to-the-profession-re-justice-participants-unable-to-attend-in-court-hearings-in-the-ontario-superior-court-of-justice-july-21-2020/>).

4. **Tax Court of Canada:** The final bullet of the "Document Transmission" section of the Guide (p. 7) states that for the Tax Court of Canada (TCC) the transmission of documents will follow the protocol established by the Court. A link is provided to that protocol. The link took us to the TCC website where a document entitled *A Notice to Parties for In-Person Hearings* dated July 8, 2020, is posted (<https://www.tcc-cci.gc.ca/tcc-cci/pdf/Notice%20to%20parties%20for%20in-person%20hearings%20-%20July%208.%202020.pdf>). The document is one-page long and, in our view, fails to set forth rules and procedures for conducting in-person hearings in a healthy and safe manner. A few points illustrate this. First, masks are not mandatory at all times; they are required only where two-meter physical distancing is not possible. For the reasons expressed above, our position is that masks must be worn at all times as a reasonable measure to protect health and safety and reduce the risk of airborne transmission of COVID-19. Second, not even the minimal document handling rules set forth in the Guide are required in the TCC guidance. Third, litigants are

expected to bring the documents that are required for their hearing. Fourth, there is no guidance on the examination and cross-examination of witnesses. We are particularly concerned about in-person hearings in the TCC because many litigants are self-represented. The rules for in-person hearings need to be clear, comprehensive, and consistent with reasonable health and safety protocols. There also needs to be a communications strategy to ensure that the rules and expectations are clearly understood by counsel and litigants – particularly self-represented litigants. Without this, there is a strong potential for problems to arise and for hearings to be conducted in a way that is not safe and healthy.

5. **Other Courtroom Facilities:** You mentioned in your email that the Halifax courtroom used by Federal Courts is not managed by PSPC, and that the Halifax courthouse is following the guidance of the local recovery committee and the provincial public health authorities. Please advise whether or not the Halifax courthouse facility is complying with the same standards as the CAS facilities. Also, we are advised that some Federal Courts (e.g., Tax Court of Canada) sometimes sit and conduct hearings in non-courthouse facilities. Please advise whether or not this is contemplated and whether or not the non-courthouse facilities comply with the same standards as the CAS facilities. Has there been a risk assessment of the Halifax courthouse and other non-courthouse hearing facilities? If so, we would like to be provided with copies of these assessments.

6. **Risk Assessments:** Your email states that all CAS facilities throughout Canada have been inspected and risk assessed. However, we have not been provided with copies of such assessments. We ask that you provide us with copies of the risk assessments for all courthouses where Federal Courts proceedings will be held and/or where our members would appear to perform their duties. This request was made in our initial round of comments.

7. **Engineering Controls (Plexiglass Barriers):** You stated in your email that plexiglass barriers have been installed around witness boxes. Other jurisdictions, such as Ontario, have gone further. Plexiglass barriers have been installed not only around the witness box but also around the judge's dais, court clerk's area, and counsel tables. Bargaining agents have also recommended a plexiglass barrier between the counsel area and the public gallery. The use of these plexiglass barriers is in line with the precautionary principle and is a reasonable measure to reduce the risk of the transmission of COVID-19.

8. **COVID Screening (p. 5):** We suggest that the following be added to the last bullet: "... including refusal to answer the questions."

9. **Physical Distancing in Other Areas:** The Guide mentions "other auxiliary rooms" (pp. 5 and 8) during the discussion of disinfecting services. We take this to include spaces such as break out rooms, meeting rooms, robing rooms, etc. It is unclear from the Guide how physical distancing, mask wearing, etc. will be supported and/or enforced in these areas.

10. **Disinfecting Services (pp. 8-9):** We were hoping for much greater detail about the cleaning protocols to be employed in the courthouses. It seems to us that the disinfecting of washrooms only once per day is inadequate. Also, it should be clearly prescribed that the use of washrooms is limited to one person at a time. We raised these points in our initial comments, but they have not been addressed.

11. **Elevators:** Many courthouse facilities are accessed by elevator. We raised concerns about elevator use in our initial comments. We appreciate that the last bullet of the Guide states that a Court Security Officer will monitor use of elevators to ensure physical distancing and/or the use of masks. As we recommended, the Court Security Officer should also advise elevator users to remain silent while riding the elevator. Finally, the discussion of elevators appears in the section on disinfecting services for common areas (pp. 8-9). It seems more appropriate to move the information on physical distancing, mask wearing and remaining silent to the section on "Entering CAS Premises" (pp. 4-5).

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12. **Enforcement:** At a number of points in the Guide, it is said that Court Security Officers will ensure compliance with health and safety measures (e.g., physical distancing, wearing masks, etc.). However, the Guide does not address the situation where a person refuses to comply. There should be a protocol for non-compliance, including the removal of the person. There should also be a clear protocol for dealing with a person who becomes ill after being admitted to the courthouse.

13. **Occupational Health & Safety:** In the initial draft of the Guide, it states that local occupational health and safety committees will conduct facility inspections. Did these inspections take place, or will they take place? If so, would you kindly provide us with the particulars and a copy of any report produced.

14. **Training:** Your email states that timely training has been provided to the staff who are enforcing physical distancing and hygiene measures. Please provide the particulars of that. What other training has been provided to courthouse workers? Has everyone been trained on the precautionary principle?

15. **Managers and Employee Guides:** Your email states that a Managers Guide and an Employees Guide has been developed and communicated. We would appreciate if you would provide up-to-date copies of these documents to us.

All of the issues raised above need to be addressed. However, we regard the first four as being critical and requiring your immediate attention and action.

On Thu, Jul 16, 2020 at 7:26 PM Gosselin, Daniel <Daniel.Gosselin@cas-saj.gc.ca> wrote:

We have reviewed the consolidated comments of the Association of Justice Counsel and would like to provide the following information.

As you know, Courts Administration Service (CAS) provides services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada (the Courts). I can assure you that the health and safety of Members of the Courts (judges and prothonotaries), our employees, counsel, litigants and the public is a top priority for CAS. We have taken all necessary measures in accordance with the guidelines established by Treasury Board Secretariat and the Office of the Chief Human Resources Officer for easing COVID-19 related restrictions at Federal Public Service Worksites. Our measures are also aligned in accordance with the easing of measures in each province where we have offices and courtrooms. I would like to confirm as well that our guide was reviewed and approved by Public Health Agency of Canada (PHAC).

For your information, our guide was shared with the Department of Justice in June and we advised of our intent to resume court activities, including the possibility of holding in-person hearings at the direction of the Courts or the presiding judge.

We agree that the reopening of courts is not a return to business as usual. This is why we have put in place a series of measures to protect the health and safety of members of the Courts, our employees, counsel, litigants and the public. This is paramount for CAS.

We are aiming at resuming some in-person hearings starting as of Monday, July 20th, 2020. The measures that we have put in place will ensure the health and safety of Court attendees for hearings for all the four Courts, including the Tax Court of Canada. The resumption of in-person hearings is done on a gradual basis. For the Federal Court of Appeal, in-person hearings will be scheduled starting September 2020 in Ottawa, Montreal and Toronto. For the Federal Court, two in-person hearings are scheduled for next week, in Edmonton and St. John's. We invite you to consult the hearings list on the Federal Court website. You will see that most hearings will be done remotely. The Federal Court is also open to offer hybrid in-person and virtual hearings if necessary. There is no scheduled hearing for the Court Martial Appeal Court of Canada. The Tax Court of Canada has its first in-person hearing scheduled next

week in Ottawa. For the time being, the Tax Court of Canada will only conduct hearings in CAS's facilities. In our other main regional offices, in-person hearings will start during the week of July 27th in Toronto and Montreal and during the week of August 3rd for Vancouver.

Due to the fluidity and complexity of the situation, the resumption of in-person hearings will be an agile process; our guide will be iterative and responsive. Our guide is an evergreen document and was developed in accordance with the following principles described in the Guidebook for departments on easing of restrictions: Federal worksites published by the Government of Canada:

- Adherence to the Chief Public Health Officer's advice and direction on public health measures and local public health officer's advice across the country;
- Guidance from the Office of the Chief Human Resources Officer
- Protection of the physical and psychological health and safety of federal employees (including all legislative requirements under Part II of the *Canada Labour Code*), recognizing that COVID-19 has resulted in unique challenges related to both physical and psychological well-being;
- Leading with empathy and communicating with care, compassion and support;
- Optimizing operational capacity and flexibility, and allocating resources in accordance with criticality of services;
- Recognizing that not all work can be accomplished remotely, the Chief administrator will have to determine how and when – particularly in highly operational settings – the use of physical distancing and other protective measures will need to be emphasized to protect the health of employees and Canadians;
- Continuing to build the resilience and sustainability of our organization and workforce, by strengthening digital and general skill acquisition for public servants, and leveraging digital infrastructure investments;
- Assessing the privacy impacts of the measures that are considered and taking appropriate steps to protect privacy rights; and
- Implementing robust change management methods and best practices to support employees in successfully adopting the changes/new measures being implemented including effective communications, employee engagement, change leadership and learning strategies.

Please see attached the latest version of our Guide for the resuming of in-person court operations that describes the measures put in place for Court attendees when entering CAS premises (entering into CAS Facilities) such as COVID screening, screening of Court attendees and the monitoring of physical distancing. Our guide also addresses the measures taken in courtrooms about the distancing and other preventive measures. Measures at the Registry counters are also described. Lastly, our guide addresses general measures about distancing, sanitizing and disinfecting. We are confident that this updated document addresses many of the AJC's comments.

To maintain physical distancing, the layout of each courtroom has been reviewed. Where it is not possible to maintain a distance of two-meters, Plexiglass dividers have been installed to ensure adequate protection. Access to the courtrooms will be limited to a maximum number of people to respect physical distancing.

With respect to COVID Screening, access to CAS Premises may be denied at the discretion of the security personnel or the Court based on health and safety considerations. Our security personnel will also ensure compliance with all our measures in CAS premises and in the Courtrooms.

With respect to the use of temperature screening, PHAC is not supporting nor recommending it at this point.

With respect to screening of Court Attendees belongings, a new bin or a disinfected bin will be used for the screening of each individual.

Standard signage has been provided by Public Service and Procurement Canada (PSPC). CAS is ensuring the appropriate display of signage in its premises and is adapting the content if necessary.

We have added "counsel" to the list of persons whose health and safety is a top priority. We apologize for this inconvenience.

Our Guide addresses the measures put in place for in-person hearings. The decision of having hearings conducted remotely or in person is the prerogative of the Courts served by CAS.

We have reviewed carefully your comments about airborne transmission and have consulted PHAC on this question.

PHAC considers COVID-19 to be primarily droplet transmission and that current evidence is incomplete for definitively concluding on the airborne transmission of COVID-19. These droplets come in many sizes and can be "aerosolized" or exhaled into the air by an infected person (e.g. by breathing, singing, sneezing, singing, coughing). These droplets (as opposed to airborne viruses, which live in the air for several hours) fall from the air relatively quickly. We are confident that with the measures we put in place in CAS premises and courtrooms, the health and safety of all Court users will be protected.

PHAC has indicated that the virus is not known to spread through ventilation or water systems.

In response to COVID-19, PSPC has implemented the following additional heat, ventilation, and air conditioning (HVAC) measures to enhance occupant wellness in our buildings. These measures are in keeping with industry guidance and consultation with Health Canada. Increasing the amount of outdoor air being provided to the space above code requirements:

- Increasing the hours of operation of the HVAC systems to promote increased dilution of contaminants and improved air circulation that promotes removal of fine particles
- Ensuring appropriate temperature and humidity levels in occupied spaces to promote occupant comfort and wellness
- Ensuring appropriate filtration is installed
- Ensuring that there is no potential cross contamination between washroom exhaust air and ventilation airflow

In addition, these adjustments are consistent with the updated recommendations on COVID-19 from the American Society of Heating, Refrigerating and Air Conditioning Engineers.

PSPC will continue to monitor ongoing research in this area and be prepared to implement new measures if necessary.

All CAS' premises and courtrooms (with the only exception of Halifax courtroom) are managed by PSPC and consequently follow the above protocol. For the Halifax courtroom, the Guidelines and Protocols developed by the Recovery Committee are informed by Public Health Guidance, Occupational Health and Safety Requirements, the Office of the Chief Medical Officer, and Public Health. It was reviewed by representatives of Labour and Advanced Education and the Occupational Health and Safety Division, and by Dr. Robert Strang, Chief Medical Officer of Health in Nova Scotia.

With respect to a rule requiring the wearing of masks by everyone at all times, our Guide specifies that Court attendees will be required to wear masks in all areas where the two-metre physical distancing cannot be maintained. This rule is conform to the advice of Health Canada. We will provide non-medical masks to Court attendees but also encourage them to bring their own personal mask or cloth face covering. The Guide mentions to Court attendees that their masks should fit properly and be worn to cover both nose and mouth.

Public health guidance reinforces that the best protection is personal hygiene measures (e.g., hand washing and coughing/sneezing into elbow) and physical distancing. When physical distancing is not possible, the next layers of protection involve implementation of physical barriers and modifications to work flow/processes.

With respect to gloves, the guidance recently received from the Office of The Chief Human Resources of Canada is indeed not recommending the use of gloves when handling documents or providing services. We have revised our guide accordingly.

Hand sanitizer distributors are available at the entry of CAS premises and Courtrooms. Court attendees will be asked to use them. In the elevators, signage has been installed for maximum occupancy. As already mentioned, with the physical distancing of two meters, masks are not mandatory. Our Court Security Officers will monitor use of elevators to ensure social distancing and/or the use of masks.

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The procedures for conducting a hearing are managed by each Court. However, I can confirm that Plexiglass dividers have been installed to separate a witness from the rest of the Court attendees.

All CAS facilities throughout Canada have been inspected and risk assessed.

With respect to suspected Covid cases, we are closely monitoring the situation for CAS's employees and members of the Courts. Please note that, to date, no confirmed cases involving CAS employees or members of the Courts have been brought to our attention. Appropriate and timely training has been provided to staff enforcing physical distancing and hygiene measures. Both a Managers and an Employees guide have also been developed and communicated.

I trust that the attached guide and the information provided therein respond satisfactorily to your comments. Please do not hesitate to communicate with me if you have any additional questions.

Daniel

Daniel Gosselin, FCTA, FCA

Chief Administrator| Administrateur en chef

Courts Administration Service| Service administratif des tribunaux judiciaires

613-996-4778| Daniel.Gosselin@cas-satj.gc.ca | facsimile/télécopieur: 613-941-6197

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From: [REDACTED]@ajc-ajj.com>

Sent: July 15, 2020 10:52 AM

To: Gosselin, Daniel <Daniel.Gosselin@cas-satj.gc.ca>

Cc: Kroll, Bill <Bill.Kroll@justice.gc.ca>; Lovett, Lynn <Lynn.Lovett@justice.gc.ca>; Dagenais, Martine <Martine.Dagenais@justice.gc.ca>; Ross, Shannon <Shannon.Ross@justice.gc.ca>; Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>; Zakuski, Stephen <Stephen.Zakuski@justice.gc.ca>; Cote, Francine <Francine.Cote@cas-satj.gc.ca>; Blondeau, Anny <Anny.Blondeau@justice.gc.ca>; Carboneau, Chantal <Chantal.Carboneau@cas-satj.gc.ca>

Subject: Re: AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN

Mr. Gosselin:

I am following up with respect to our comments on the Federal Courts reopening plan (*COVID-19: Recommended Preventive Measures – Resuming Court Operations in Work Sites*) which were provided to you on July 3rd. Your subsequent email stated that the intent was for Federal Courts to resume operations on July 20th - five days from now. We are extremely concerned that this projected reopening date is only a few days away, and a finalized plan is not in place that will guide how the courts can resume operations in a safe and healthy way. Further, in accordance with the guiding principles included in our comments, we believe strongly that there must be meaningful, effective and timely consultation on any subsequent version of the reopening plan (principle #5). In our respectful view, Federal Courts should not reopen for in-person operations until appropriate consultations on subsequent versions of the reopening plan have taken place and that plan is finalized. This is certainly consistent with the notion that employees, through their bargaining agents, have a significant role to play in the health and safety of their workplaces.

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This brings me to a second point of serious concern. Our members are reporting that the Tax Court of Canada (TCC) intends to resume in-person operations this month. Given this intent, our members are reporting serious concerns about the adequacy of health and safety protocols. I note that a document has been posted on the TCC website providing guidance for attending in-person hearings. This guidance is very brief and does not address the full range of health and safety concerns arising from the COVID-19 pandemic. Therefore, the AJC has serious concerns about the ability of the TCC to conduct in-person operations in a safe and healthy manner without a more comprehensive plan.

It has been our understanding that, as a Federal Court, the TCC would resume in-person operations in accordance with the Federal Courts reopening plan referred to above. The recent announcements posted on the TCC website appear to bring this into question.

I would appreciate an update on the status of the Federal Courts reopening plan, the schedule for further consultations, whether the scheduled date for the resumption of operations is still July 20th, and clarification on the resumption of in-person operations at the TCC. I look forward to hearing from you at your earliest convenience.

On Mon, Jul 6, 2020 at 5:10 PM Gosselin, Daniel <Daniel.Gosselin@cas-satj.gc.ca> wrote:

Dear [REDACTED]

Your email to Lynn Lovett, Bill Kroll and Anny Blondeau of July 3rd, 2020 was forwarded to me. I acknowledge receipt of the comments submitted by AJC with respect to the draft Courts Administration Service document dated May 2020: *COVID-19: Recommended Preventive Measures – Resuming Court Operations in Work Sites*.

The resumption of Court operations in work sites is planned to begin during the week of July 20th, 2020 and not on July 6th as mentioned in your email. I can assure you that the health and safety of members of the Courts (judges and prothonotaries), our employees, counsel, litigants and the public is a top priority for CAS. We have taken all necessary measures in accordance with the guidelines established by Treasury Board Secretariat and the Office of the Chief Human Resources Officer for easing COVID-19 related restrictions at Federal Public Service Worksites. Our measures are also aligned in accordance with the easing of measures in each province where we have offices and courtrooms.

While our measures are appropriate, I understand that AJC has health and safety concerns with respect to our plan to resume in person hearings. I will provide you with a detailed response in order to address them and ensure that the members of AJC also have confidence in our plan.

Best regards,

Daniel

Daniel Gosselin, FOLTA, FCA

Chief Administrator | Administrateur en chef

Courts Administration Service | Service administratif des tribunaux judiciaires

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From: Blondeau, Anny <Anny.Blondeau@justice.gc.ca>**Sent:** July 3, 2020 5:20 PM**To:** Gosselin, Daniel <Daniel.Gosselin@cas-satj.gc.ca>; Cote, Francine <Francine.Cote@cas-satj.gc.ca>**Cc:** Kroll, Bill <Bill.Kroll@justice.gc.ca>; Lovett, Lynn <Lynn.Lovett@justice.gc.ca>; Dagenais, Martine <Martine.Dagenais@justice.gc.ca>; Ross, Shannon <Shannon.Ross@justice.gc.ca>; Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>; Zaluski, Stephen <Stephen.Zaluski@justice.gc.ca>**Subject:** FW: AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN

Good afternoon,

Following our National Labour Management Consultation Committee meeting, your draft document *COVID-19: Recommended Preventive Measures – Resuming Court Operations in Work Sites* was shared with the Association of Justice Counsel (AJC), and we have committed to sharing their feedback with you, if any.

Below are their comments that were shared with us today.

Thank you,

Anny Blondeau

A/Director, Centre of Expertise for Labour Relations / Directrice intérimaire, Centre d'expertise en relations de travail

Department of Justice Canada / Ministère de la Justice Canada

Telephone: (613) 960-3200 or (613) 301-5410 / Téléphone : (613) 960-3200 ou (613) 301-5410

From: [REDACTED] <[REDACTED]@ajc-ajj.com>**Sent:** July 3, 2020 12:22 PM**To:** Lovett, Lynn <Lynn.Lovett@justice.gc.ca>; Kroll, Bill <Bill.Kroll@justice.gc.ca>; Blondeau, Anny <Anny.Blondeau@justice.gc.ca>**Subject:** AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN

Lynn, Bill and Anny:

Below please find the AJC's comments on the CAS court reopening plan. I've also attached the comments in a Word document.

The Association of Justice Counsel (AJC) is the bargaining agent for 2,600 of Canada's Crown counsel working with the Department of Justice Canada, Public Prosecution Service of Canada, and independent agencies/tribunals. AJC members appear in all levels of levels of federal courts and tribunals.

The AJC has reviewed the following draft Courts Administration Service document dated May 2020: *COVID-19: Recommended Preventive Measures – Resuming Court Operations in Work Sites*.

We appreciate being consulted and welcome the opportunity to comment on this document, although we think it would have been even more effective and meaningful to have involved us in this process at an earlier stage.

We understand that the Courts Administration Service (CAS) may be aiming for a July 6, 2020, reopening of some federal courts and tribunals. We strongly recommend that the reopening date be postponed until all health and safety concerns are addressed so that not only the CAS, but all justice stakeholders (including bargaining agents) have confidence in the plan.

GUIDING PRINCIPLES FOR COURTS REOPENING

In our view, any plan for the reopening of courts must comply with the following guiding principles:

1. The reopening of courts is not a return to business as usual. The COVID-19 pandemic will require new ways of ensuring access to justice yet respecting public health protocols, minimizing in-

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person appearances at courthouses, and maximizing remote/virtual legal proceedings.

2. Courthouses are not just places where justice is administered, they are workplaces for the judiciary, counsel, court and other support staff, police, and security. Employers have a legal obligation to keep their employees safe and healthy when they perform their duties. Similarly, those responsible for the operation of courthouses have an obligation to ensure that court houses are safe and healthy for workers, litigants, and members of the public.

3. The safety and health of workers, litigants, and the public should be a paramount consideration in any plan to reopen courts. The interests of justice are not met if the safety or health of such persons are put at risk by the reopening of courts.

4. Plans for the reopening of courts should be detailed, firmly grounded in science and based upon expert medical advice from public health professionals. That said, the "precautionary principle" should be applied to ensure that measures are taken to protect health and safety even if it cannot be established with scientific certainty that there is a cause and effect relationship between an activity and the harm (see *Ontario Nurses Associations v. Eatonville/Henley Place*, 2020 ONSC 2467).

5. The planning and decision making for the reopening of courts should be open, transparent, respectful, and considerate of the interests and concerns of all stakeholders. Such planning and consideration should include meaningful, effective and timely consultation with stakeholders, including the representative bodies or bargaining agents for courthouse workers (e.g., legal counsel).

COMMENTS ON COVID-19: RECOMMENDED PREVENTIVE MEASURES – RESUMING COURT OPERATIONS IN WORK SITES

Page 3: Guiding Principle

- We were startled that the list of persons whose health and safety is a top priority does not include counsel who appear in federal courts and tribunals. Clearly, "counsel" needs to be added to this list.
- Please see Guiding Principle No. 2 and 3 above. Access to justice is an important principle. However, it does not outweigh the health and safety of workers, the judiciary and the public.
- The expression "members of the Courts" seems somewhat ambiguous. What does this mean? Judges only, or does it include other judicial officials?
- If July 6, 2020, is under consideration as the opening date for federal courts and tribunals, that date should be postponed until such time as all health and safety concerns are addressed to the satisfaction of CAS and justice stakeholders, including bargaining agents.

Page 3: Context

- "Counsel" should be added to the list in the first paragraph.
 - Please see Guiding Principle no. 1. In the AJC's view, the focus should be on maximizing remote/virtual legal proceedings. In-person court proceedings should be conducted only when absolutely essential and when a remote/virtual proceeding is not possible. This is particularly important in light of the growing body of evidence that COVID-19 is transmitted by airborne means:
 - Airborne transmission is now seen as the dominant route for the spread of COVID
- Study published on June 11 by the "Proceedings of the National Academy of Sciences of the United States of America": Identifying airborne transmission as the dominant route for the spread of COVID-19. <https://www.pnas.org/content/117/26/14867>
- Contact (surface) transmission is far less likely than aerosol transmission
- NYTIMES (June 25) : Arizona 'overwhelmed' with demand for tests as US system shows strain <https://www.nytimes.com/2020/06/25/upshot/virus-testing-shortfall-arizona.html>
- Indoor environments are much more dangerous for airborne transmission, especially when ventilation is poor, like in old buildings. Court involves speaking, often loudly to be heard, for many hours, which of course greatly increases the risks.
- LAW GAZETTE UK Top health expert calls for face masks in court <https://www.lawgazette.co.uk/news/top-health-expert-calls-for-face-masks-in-court/5104763.article>

Page 4: Entering CAS Premises

- The title "Entering CAS Premises" is not clear. To be specific, it is not clear from the title whether the guidance which follows applies only to CAS offices, or whether it applies to CAS offices and courthouses/courtrooms.
- You may wish to consider an initial bullet to the effect that virtual/remote proceedings will be used wherever possible/appropriate (see Guiding Principle no. 1). Where in-person proceedings are conducted, federal courts should consider following the example of Quebec courts and hold any in-person hearings on a "huis clos" basis (i.e., by limiting attendance to parties and their counsel only as well as the media). Hearings through videoconferencing should be automatically granted when a party or their representative are over the age of 60, pregnant, live with comorbidities or with a person who is over the age of 60, pregnant or has a comorbidity.
- The AJC supports a rule requiring the wearing of masks by everyone at all times in courthouses/courtrooms, regardless of whether physical distancing can be maintained. This should not be discretionary. The Ontario courts reopening plan has been revised to include a mandatory mask requirement. The City of Toronto is considering a rule that everyone must wear a mask while inside a building. One must wear a mask to take public transit. In our view, everyone must wear a mask in a federal courthouse/courtroom. All that being said, there may be individual circumstances (e.g., medical reasons) where an accommodation is required. The responsibility for making a decision on accommodation should be given to a person who is appropriately qualified/trained.
- Non-medical grade masks are now seen as a very useful barrier to virus transmission and at their most effective when universally worn:
 - **Masks, even non-medical grade, can drastically reduce transmission risks when universally adopted**
GLOBAL NEWS (June 22): The faster a country required masks, the fewer coronavirus deaths it had, study. <https://globalnews.ca/news/7075024/mask-wearing-fewer-coronavirus-deaths/>
- It should be clear that entry to the courthouse/courtrooms will be denied to those who do not wear a mask. We fully support the CAS plan to supply masks and gloves (subject to the next bullet) to those who do not have them.
- In our view, the wearing of gloves should be discretionary, although perhaps encouraged in some circumstances (e.g., where documents or other things are being handled). That said, it should be noted that the majority of scientific and news articles thus far warn against the use of gloves, as this it may give a false sense of security and be a bigger danger than a benefit (i.e., people remember more often to wash their hands than their gloves when they touch surfaces).
- We recommend including a statement that individuals will be provided instructions on how to use PPE prior to use, including how to properly remove and dispose of these. You may also want to mention to attendees that their own masks should fit properly and be worn to cover both nose and mouth. There should be a provision for accommodation where medical contraindication for a mask/gloves is provided and no COVID-related symptoms are present.
- Hand sanitizer should be available at the entry point to the courthouse, courtrooms and meeting rooms. All who enter should be required to use it prior to entry. This, in conjunction with the use of masks, will minimize the risk of transmission of COVID-19.
- Before getting to a courtroom, court attendees typically have to take an elevator in most courthouses. Security should ensure that elevator riders follow these instructions:
 - Mandatory masks while riding;
 - Complete silence unless an urgent communication is required, since aerosols linger in the air for very long period in elevators;
 - Limit number of riders and markers on the floor to ensure that people are physically distancing.

in elevators, riders should wear a mask and stay silent to avoid leaving aerosol that will linger in the air.

WASHINGTON POST (June 22): Going back to the office? What public health experts say about using the elevator. <https://www.washingtonpost.com/health/2020/06/22/going-back-office-what-public-health-experts-say-about-riding-elevator/> AND <https://www.nytimes.com/2020/06/26/health/coronavirus-elevator-reopen.html>

Page 4: COVID Screening

- Signs should be posted at the court entry point with the COVID-19 screening questions prominently displayed. It should be made clear that persons will be denied entry to the courthouse/courtroom if they fail the screening, provide unsatisfactory answers, or refuse to answer.
- You may wish to consider having paper forms available that persons can complete and provide to Court Security in order to speed up the entry process, provided that this can be done without presenting a health and safety risk to staff. Another possibility is the creation of an app or website where persons can review the screening protocol and determine in advance whether they should attend court.
- Court Security should be mandated to deny entry to anyone who fails the screening process, provides unsatisfactory answers to the screening questions, or refuses to answer the screening questions.
- Court security should have the discretion to remove any person about whom they develop health and safety concerns, notwithstanding that the person was screened and initially granted entry. There should be a protocol for dealing with this situation. Such a person will need to be assisted and removed from the courthouse in a manner that minimizes the risk of infecting others.
- The AJC supports the use of temperature screening as an additional precautionary measure (see Guiding Principle no. 4).

Page 5: Screening of Court Attendees and their Belongings

- When bins are used to screen belongings, will they be disinfected every time they are used by a new person? Who will be responsible for doing so? These points should be addressed.

Page 5: Monitoring Social Distancing

- We understand that public health authorities prefer the expression "physical distancing" over "social distancing." We recommend that the term "physical distancing" be used consistently throughout the document. That is not currently the case. The use of both of these terms (as sometimes happens in the same sentence or paragraph) could lead to confusion.
- Within the courtroom, care should be taken to ensure that a two-meter distance can be maintained between the public gallery and the counsel area. If that is not possible, a plexiglass barrier should be installed along the bar to separate the public gallery and the counsel area.
- We commend the clear direction that Court Security will be responsible for enforcing physical distancing practices. That said, we recommend that it be made clear that Court Security is responsible for enforcing all health and safety protocols including physical distancing, wearing of masks, etc. It should also be clear that those who refuse to comply will be removed.

Page 5: Distancing

- Within the courtroom, care should be taken to ensure that a two-meter distance can be maintained between the public gallery and the counsel area. If that is not possible, a plexiglass barrier should be installed along the bar to separate the public gallery and the counsel area.
- There should be a plexiglass barrier separating the judge's dais, witness box, court staff, and counsel/parties.
- Consideration should be given to limiting the number of persons in a courtroom beyond that which is required to maintain two-meter distancing so as to limit aerosols lingering in the air. The maximum number of people allowed in a courtroom should also take into consideration air

circulation and the ability of the HVAC/ventilation system to filter and bring an intake of outdoor fresh air that is as close as possible to 100% inside a courtroom.

- This document should also cover the procedures for conducting a hearing in a safe manner. Here are some suggestions to consider:
 - We should have guidelines on how to safely call witnesses for examination/cross-examination as well for self-represented litigants. Court attendees should be sent a paper copy or a hyperlink outlining the court's expectations on how to safely conduct of a hearing. Any court attendee should confirm having read and understood these expectations before being admitted inside a courthouse.
 - Witnesses should preferably be examined or cross-examined in a separate room with live feed in the courtroom. If this is impossible, a plexiglass divider should always separate a witness from the rest of the court attendees.
 - Exhibits and documents that parties rely upon during a hearing should be digitalized and shown on a screen to avoid contact with paper copies among court attendees.

Page 6: PPE and Disinfection

- In the AJC's view, all persons who enter a courtroom should be required to use hand sanitizer as a reasonable precaution against COVID-19 transmission. Attendees should be able to use their own hand sanitizer or the hand sanitizer that is available for all to use.
- We repeat our comment that exhibits and documents that parties rely upon during a hearing should be digitalized and shown on a screen to avoid contact with paper copies among court attendees, counsel and court staff.
- It is commendable that wipes, gloves and masks will be provided at appropriate locations in the courtroom. However, consideration should be given to devising a protocol to ensure that the stockpile is not contaminated. Will court security control these items? There should be a procedure for the safe pick up of a mask (e.g., hand sanitizer first, then pinching the centre of the mask to pick it up to ensure that other masks are not contaminated). If a mask becomes soiled or moistened, will court attendees be able to get another?
- It may be useful to have signage which highlights that masks must fit and be worn properly over the nose and mouth. The signage could also provide information on how to properly remove and dispose of masks and gloves.
- Also, if masks are mandatory inside the courthouse building and courtrooms, they should not be removed when attendees exit a courtroom.

Page 7: Other Recommended Measures

- If court attendees are waiting in a common area prior to a scheduled court appearance, it should be noted that ventilation and air filtration has to be sufficient to ensure that there is no risk of airborne transmission of COVID-19.

Page 8: Suspected or Confirmed Cases

- Will the court be keeping a log of all court attendees in order to facilitate contact tracing after a COVID-positive case is confirmed?

Page 8: Building Systems

- HVAC systems are an area of major concern. The circulation, replacement and filtration of air in courthouses and courtrooms is now a major point of concern because of the building body of information that COVID-19 is transmitted by airborne means. If there is not proper replacement and filtration of the air with filters capable of capturing the COVID-19 virus, then there is a serious risk that the HVAC system may become a means of transmitting the virus throughout the courthouse rather than preventing such transmission.

- HVAC systems need to be inspected by persons with the subject matter expertise to assess whether they are able to appropriately circulate, replace and filter the air in courthouses and courtrooms so as to prevent airborne transmission of COVID-19. Written reports should be provided to justice participants, including bargaining agents.

Page 8: Human Resources – Occupational Health and Safety

- Staff, courthouse workers and managers will have to be provided with appropriate training to ensure that they can carry out their duties in a healthy and safe way. This training will need to be completed before courts resume in-person operations.
- The plan suggests that OHS inspections will be conducted by a manager, one union representative and security personnel. While an inspection of this nature should take place, there should also be an inspection by a person who has the requisite medical and/or occupational health and safety expertise in order to assess whether the proposed health and safety protocols are satisfactory. An inspection of the HVAC system should also be completed by a competent person.

Page 9: Working Areas and Meeting Rooms

- Masks should be worn in all working areas and meeting rooms. Workers who have their own closed office with a door may remove their masks if their office doors are closed and there are no other occupants in the office. Offices should be disinfected after each use.

Page 10: Personal Protective Equipment

- The section states that PPE includes gloves and masks. Generally, it is understood that PPE would mean medical grade gloves and masks (N-95 masks). It is not clear if that is what is meant here. Perhaps it would be best to say whether masks means medical grade masks or non-medical masks.

Page 10: Non-Medical Masks

- In this section or the previous section (PPE), it should be emphasized that masks should be worn at all times and, at the very least, in every situation where a two-meter distance cannot be maintained including in elevators, common areas, stairwells, entries/exits, lunchrooms, bathrooms, etc. As suggested above, masks should be worn at all times except where workers have their own closed office with a door in which case they may remove their masks if their office doors are closed and they are alone (or where accommodation is required).

Page 10: Guiding Principles for Increasing Access to Work Sites

- Again, does “work site” mean CAS offices or does it include courthouses/courtrooms?
- The reopening plan should take into account the individual circumstances of employees and the accommodation needs of groups with increased vulnerability to COVID-19 related complications (or vulnerable family members) and childcare/eldercare responsibilities.

Page 11: Registry Services

- The Federal Court of Appeal should modernize its registry to allow e-filing of documents on a permanent basis, similar to what has already been done by the Tax Court of Canada and the Federal Court of Canada.
- The registry personnel who are required to wear gloves should of course be supplied with the gloves, and such personnel should be provided with training on the appropriate use, donning, removal and disposal of gloves.
- As suggested above, registry personnel should wear masks at all times except where they have their own closed office with a door in which case they may remove their masks if their office doors are closed and no one else is present.

Page 12: Payments Received

- The second last bullet refers to a “hydro-alcoholic” solution. Does this mean hand sanitizer? If so, it would likely be better to simply use the expression “hand sanitizer.”

Page 12: Security – Protective Security Officers or Chauffeurs

- We repeat our comment about the exact meaning of "members of the courts."

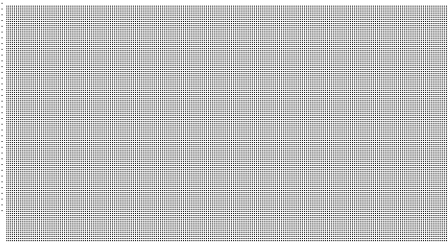
s.19(1)

Page 15: Annex A – General Precautionary Measures

- We recommend adding a bullet to the effect that hands should be disinfected with hand sanitizer on entry and exit from a courthouse building, courtroom, meeting room, etc.

ADDITIONAL POINTS

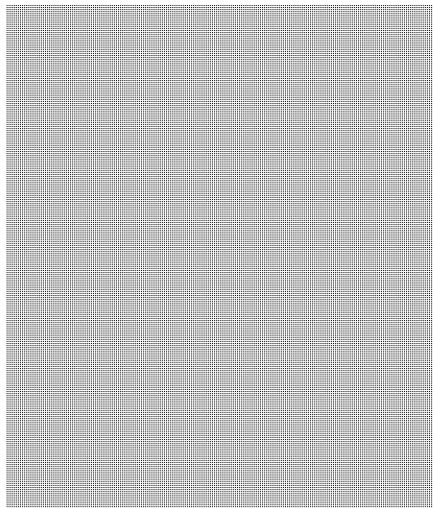
- Federal courts and tribunals should assess their rules to determine how proceedings can be conducted in a healthy and safe manner.
- It is unclear from the document what expert medical, public health, or occupational health and safety advice that the CAS has sought and relied upon in preparing the document. In the interests of full transparency and cooperation with justice stakeholders (Guiding Principle 5), this information should be provided.
- Courthouse workers, judiciary, court security, managers, etc., need to be given adequate training on health and safety protocols and how to perform their duties in a healthy and safe manner. This training must be completed before courts reopen.
- A more detailed plan must be provided on the enhanced cleaning that will be done at courthouses. If judges' chambers are used by more than one judge, they should be cleaned and disinfected after each occupant.
- It is unclear from the document how the use of such facilities as washrooms will be managed. For example, will the use of washrooms be limited to one person at a time? Will there be access to touchless soap dispensers? A more comprehensive plan is required.
- Signage and markings need to be put in place at courthouses to ensure, for example, appropriate physical distancing, one-way walking areas, seats that may and may not be used, etc.
- Consideration should be given to having medical professionals on hand at the screening point to assist in the screening of court attendees.
- A comprehensive risk assessment should be conducted at each courthouse by personnel with the appropriate medical and health and safety expertise. An occupational health and safety inspection by managers, union representatives, etc. does not meet this requirement. These risk assessments need to be completed and any deficiencies corrected before in-person court operations resume. There have been instances where some federal courts (e.g., Tax Court of Canada) have conducted hearings in facilities such as hotels or gymnasiums. Risk assessments of these facilities would be required as well if they are to be used. The risk assessment reports should be provided to justice stakeholders including bargaining agents.
- HVAC assessments need to be conducted at each courthouse to ensure that there is appropriate ventilation, air replacement and air filtration so as to prevent airborne transmission of COVID-19. These assessments must be carried out by personnel with the appropriate qualifications and may require additional input by medical experts.



8/19/2020

AJC-AJJ Mail - RE: AJC COMMENTS ON THE COURTS ADMINISTRATION SERVICE REOPENING PLAN
Released under the Access to Information Act /
Divulgué(s) en vertu de la Loi sur l'accès à l'information.

s.19(1)



ANNEX 2

s.19(1)

s.21(1)(a)

Due Date: 2020-11-17

Doc Date: 2020-08-19

180001

2020-007918

[REDACTED]@ajc-ajj.ca; [REDACTED]@ajc-ajj.com

Correspondence from the Deputy Minister of Justice and Deputy Attorney General of Canada

Dear [REDACTED]:

Thank you for your correspondence of August 19, 2020, concerning the reopening of federal courthouses.

At the outset, please accept this response on behalf of the Honourable David Lametti, Minister of Justice and Attorney General of Canada; the Honourable Jean-Yves Duclos, President of the Treasury Board; the Honourable Anita Anand, Minister of Public Services and Procurement and Accessibility; the Honourable Patty Hajdu, Minister of Health; and Dr. Theresa Tam, Chief Public Health Officer of Canada.

As you know, the Courts Administrative Service (CAS) provides services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada (the Courts). Due to the fluidity and complexity of the COVID-19 pandemic, the resumption of in-person court hearings must be informed by the best available scientific and medical knowledge and empirical data while ensuring Canadians have access to justice. The health and safety of the members of the Courts, counsel, litigants, and all Canadians is paramount.

Please be assured that the *Resuming In-Person Court Operations Guide* (CAS Guide), which was developed early this summer, adheres to the guidance and direction on public health measures provided by the Public Health Agency of Canada (PHAC), as well as to the advice provided by local public health officers across the country. The CAS Guide also adheres to the guidance for federal public workplaces as outlined in the *Guidebook for the Easing of Restrictions*, provided by the Office of the Chief Human Resources Officer at the Treasury Board of Canada Secretariat (TBS-OCHRO) as the employer for the core public administration. All guidance provided to federal government employers is based on the precautionary measures and recommendations of the PHAC [REDACTED]

In addition, Health Canada and the PHAC are closely monitoring the scientific and medical studies regarding COVID-19, including those that examine how the virus is

transmitted, and will continue to align their guidance based on the latest information. Given that the number of cases (epidemiology) of COVID-19 varies in each jurisdiction, advice regarding the wearing of non-medical masks also varies in each jurisdiction. It may be helpful for you to know that the wearing of non-medical masks, or cloth face coverings, is recommended in jurisdictions where local epidemiology and rate of community transmission warrant it, or when it is not possible to maintain a two-metre physical distance from others, particularly in crowded public settings.

Accordingly, it will be up to the Courts served by the CAS to determine, in consultation with local public health authorities, whether circumstances require the mandatory use of non-medical masks in the Courts. I understand that the CAS has reviewed the layout of all courtrooms and has implemented measures to maintain physical distancing. Where it is not possible to maintain a distance of two-metres, Plexiglas dividers have been installed. As the COVID-19 pandemic evolves, Health Canada and TBS-OCHRO are committed to ensuring that the health guidance provided to public servants, and to all Canadians, is revised and communicated as quickly and appropriately as possible. I can assure you that all workplace plans will be reviewed and adjusted with the latest health guidance and precautionary measures.

Public Services and Procurement Canada (PSPC) is responsible for the management of federal office buildings. It may interest you to know that PSPC has confirmed that current public health and industry guidance (for example, from the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE]) recommends avoiding stagnant air conditions and promoting airflow. In their document entitled *Heating, Ventilation, Air-Conditioning (HVAC) Minimum Requirements—(COVID-19)*, PSPC includes enhancing the quantity and quality of air circulation by increasing the hours of operation of HVAC systems and increasing the percentage of outdoor airflow, while maintaining temperature and humidity levels as per the National Joint Council Occupational Health and Safety Directive.

As you may know, there is an interdependence between airflow and filtration; the higher rated the filter, the greater the resistance to airflow that impedes air circulation. Like the other potential enhancements to HVAC operation, the choice of filter is a function of system design and capacity particular to each building managed by PSPC. As such, the PSPC guidance notes using the highest rated filter for which the particular system was designed, with an emphasis on ensuring that filters are clean and properly fitted to prevent airflow bypass. PSPC's HVAC guidance incorporates the ASHRAE recommendations in the federally owned and leased buildings in which CAS operates, and PSPC will be following up with building operators to verify that the elements of the current PSPC HVAC guidance are being implemented.

Given that the COVID-19 pandemic is an evolving situation, as well as the fact that workplace plans are "ever-green" documents, the CAS advises that they will ensure that

the CAS Guide is amended and measures modified accordingly if new public health guidance is issued. Any amendments will be made in consultation with the Courts, and will be communicated and implemented without undue delay.

It may be helpful for you to know that the Department of Justice Canada is currently engaging with our provincial and territorial counterparts on a number of legal issues raised by the COVID-19 pandemic, including the safe restoration of court operations. This includes the Action Committee on Court Operations in Response to COVID-19, which is co-chaired by the Right Honourable Richard Wagner, Chief Justice of the Supreme Court of Canada, and Minister Lametti. While the provinces and territories are responsible for the administration of justice within their jurisdictions, the Committee provides, in a cooperative fashion, guidance to courts across Canada as they determine the best way to safely restore operations.

For example, the Committee released *Tip Sheets* on all phases of the jury trial process, one of the most pressing challenges courts are facing during this time. The Committee also released the *Court Audit Tool: Adapting Small Court Spaces and Identifying Alternative Facilities* to illustrate health and safety considerations that can be applied to complete an inventory of useable court space within a jurisdiction, and to offer guidance for the selection of alternative facilities where existing court spaces cannot be adapted to safe usage in response to the COVID-19 pandemic.

To ensure the safety of departmental employees who are required to attend third-party premises, the Department engaged with the Association of Justice Counsel (AJC) through its membership on internal departmental health and safety committees to co-develop guidance for employees, entitled *Occupational Health and Safety Tips: Working at Third-Party Premises*, in addition to *Direction on Health and Safety Protocol Breaches in Court*. This supplemental guidance material provides employees with measures to keep themselves safe, and includes guidance for employees and managers on what to do if protocols are not respected. The Department has also implemented proactive steps such as providing employees with non-medical masks, travel hand-sanitizer, and protocols if they are required to handle documents. Please be assured that the Department is committed to on-going engagement with the AJC and all bargaining agent colleagues on matters of occupational health and safety. I thank you for your continued commitment in doing the same.

I would like to assure you and the members of the AJC that the health and safety of public service counsel, public servants, members of the judiciary, and the Canadian public remain our top priority.

Thank you again for writing.

Sincerely,

Nathalie G. Drouin, Ad. E.
Deputy Minister of Justice and Deputy Attorney General of Canada

c.c.: The Honourable David Lametti, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

The Honourable Jean-Yves Duclos, P.C., M.P.
President of the Treasury Board

The Honourable Anita Anand, P.C., M.P.
Minister of Public Services and Procurement and Accessibility

The Honourable Patty Hajdu, P.C., M.P.
Minister of Health

Dr. Theresa Tam
Chief Public Health Officer of Canada.