



THE CANADIAN
BAR ASSOCIATION
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March 22, 2022

Via email: FC_Reception_CF@cas-satj.gc.ca

The Honourable Paul Crampton
Chief Justice
Federal Court of Canada
90 Sparks Street
Ottawa, ON K1A 0H9

Dear Chief Justice Crampton:

Re: Vaccination Protocol for the Federal Court – Feedback

We write on behalf of the Federal Courts Bench and Bar Liaison Committee (FCBBLC) in response to your request at our December 3, 2021, meeting to understand the views of the bar about potential Federal Court measures relating to COVID-19 restrictions. We canvassed the CBA Section executives with a practice before the Federal Courts, posing two questions:

1. The Federal Court is contemplating a protocol requiring proof of vaccination for anyone attending an in-person hearing. Should they do so? What factors should the Federal Court consider in deciding whether to establish a protocol requiring participants in in-person hearings to show proof of vaccination? What are the advantages and disadvantages of such a protocol?
2. Are there specific types of hearing that should be in-person, or do remote hearings generally comply with court requirements? Why?

The discussions considered the interaction of access to justice and public safety, the importance of the open courts principle, public confidence in the justice system, Court scheduling, and administrative burden on the Court. The following summarizes the discussions.

In general, CBA members who participated in the discussions do not oppose any specific type of restriction imposed on in-person hearings.

If the Court mandates a vaccination requirement, it should result in all parties appearing in the same format. In other words, all parties should appear in person, or if an unvaccinated party cannot appear in person the hearing should be held virtually. We see two possible alternatives:

- consent from all participants that one party attends in person while others attend virtually;

- in-person hearings could be conducted with masking, social distancing and the presentation of a negative rapid-test. We recognize that use of rapid tests are less efficient and can lead to adjourning or postponing hearings if there is a positive test on the day of the hearing.

In sum, a vaccination policy for in-person hearings is favoured.

Some CBA members suggest that the Federal Court adopt the procedures applied in the provincial or territorial superior court of the jurisdiction where it sits. We recognize that adopting the local restrictions may lead to asymmetrical restrictions across Canada. Alternatively, the Federal Court could adopt the most restrictive measures imposed by a provincial or territorial superior court and apply those restrictions across Canada. In either case, those restrictions will change from time to time.

A vaccination requirement imposed by the Federal Court would particularly affect hearings that proceed on an expedited or urgent basis if the unvaccinated person cannot comply in time for the hearing. In those cases, individuals who are unvaccinated due to medical, religious or other reasons should not be deprived of an in-person hearing. In those circumstances, accommodation can be offered with proof of a negative COVID-19 test. We note that exemptions add an administrative burden on the Court. It could offer unvaccinated persons the option of attending in person subject to either having a negative COVID-19 test at their own expense, or having the hearing held virtually.

In closing, the CBA members who participated in the discussions generally do not believe that a vaccination requirement would breach the open courts principle, even if most members prefer in-person hearings in litigation matters where credibility issues are before the Court. The Federal Court should always have potential access to a courtroom to accommodate litigants who cannot attend a hearing remotely due to insufficient internet connection or because attending a virtual hearing is impractical for family reasons.

We hope these observations will be helpful.

The FCBBLC looks forward to the day when the Federal Court's in-person activities can resume safely.

Yours truly,

(original letter signed by Julie Terrien for Guy Régimbald)

Guy Régimbald
Chair, Federal Courts Bench and Bar Liaison Committee