



Action Committee on Court Operations in Response to COVID-19

CONSIDERATIONS PERTAINING TO COVID-19 TESTING FOR PARTICIPANTS IN COURT PROCEEDINGS

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

NOTICE: *This document highlights best practices when the epidemiological situation and relevant risk assessments call for enhanced public health measures to control the spread of COVID-19 in a court environment. Please contact local public health authorities for current requirements, which may differ from the practices outlined in this document, and your local Occupational Health and Safety regulator for current guidance specific to the workplace.*

The provinces and territories have primary responsibility for the administration of public health measures, including testing, within their jurisdictions. Any protocols developed in this area should be reviewed and adapted to meet local circumstances and needs, in collaboration with local [public health](#) authorities.

In the exercise of due diligence and responsible stewardship, control measures are likely to evolve with knowledge related to the risks posed by COVID-19 and the usefulness of such measures to mitigate those risks.

SUMMARY

A [communiqué](#) from the Action Committee encourages court officials to collaborate with local, provincial and territorial public health authorities to examine how participants involved in court proceedings could access priority testing and results as well as rapid tests as needed. This document is intended to facilitate additional dialogue between officials on that matter.

Two main types of tests are discussed: the laboratory-based Polymerase Chain Reaction (PCR) test and the rapid antigen test.

The document then explores access to priority (laboratory-based PCR) testing and results along with potential scenarios for the deployment of rapid tests in a court setting.

RELEVANT TYPES OF COVID-19 TESTING

While Health Canada has authorized numerous tests to detect SARS-CoV-2 ("COVID-19") over the course of the pandemic, the focus of this document is on two main types of tests: (1) the laboratory-based molecular Polymerase Chain Reaction (PCR) test and (2) "point of care" tests, referred to as "rapid tests" for the purposes of this document.



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A PCR test is sensitive to original viral ribo-nucleic acid (RNA). Laboratory-based PCR tests require a sample from an individual, collected by a health professional. Test results can take one or more days to obtain from a laboratory, depending on demand and capacity, but this test is considered the “gold standard” for diagnostic COVID-19 testing in Canada given its sensitivity and accuracy. An individual can test positive for COVID-19 with a PCR test but no longer be contagious as the viral RNA may linger in the body beyond the contagion period.

Rapid antigen tests detect viral protein, and sample collection and results analysis also take place on site (e.g. at home or when entering the court setting). Rapid antigen tests perform optimally when the viral load is higher in the individual, usually in the early phase of the disease, which is typically when an individual is most contagious. A negative test does not guarantee a person is COVID-free; the virus may be latent or beyond the detection thresholds of a rapid test.

Results for rapid tests can be obtained within hours, sometimes minutes. Rapid tests cost less than laboratory-based PCR tests and may be administered by non-professionals. They are considered less sensitive or accurate than a laboratory-based PCR test. Thus, the interpretation of the results, and decisions based upon them, should take into account other factors such as the symptoms of the individual, possible exposure, purpose of the testing, disease prevalence in the community and more. In some contexts, individuals who test positive and those with negative results but other risk factors may be sent for a laboratory-based PCR test for verification purposes.

ACCESS TO PRIORITY TESTING AND RESULTS

As noted above, it can take days for a laboratory to process the results from a PCR test. Due to issues of demand and capacity, individuals may also experience wait times before they can obtain a test, or tests may only be available to individuals who meet certain criteria. When the individuals seeking these tests are participants in court proceedings, these delays may have negative consequences on court proceedings.

Canada’s courts are crucial in supporting community and national-level recovery or continuity, restoring economic activity, and strengthening social cohesion. In its [Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic](#), Public Safety Canada identifies those who support the court system or the administration of justice within the courts as performing an essential service or function. Accordingly, the Action Committee recommends that local public health officials, working in cooperation with court officials, examine how participants involved in court proceedings could access priority testing and results as needed.

A survey of Canadian jurisdictions on access to priority (laboratory-based PCR) testing and results produced the following promising practices:

- Designating a responsible court official to liaise with the local public health authority to develop and implement a protocol to establish priority testing for participants in court proceedings
- Arrangements to identify jurors specifically as candidates for priority testing and results, to facilitate in-person jury trials



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Identifying essential services eligible for additional public health measures, such as priority screening, is ultimately a provincial and territorial responsibility.

POTENTIAL DEPLOYMENT OF RAPID TESTING IN THE COURT SETTING

Health Canada and the Public Health Agency of Canada (PHAC) have issued guidance documents on the use of rapid tests, including a January 2021 [report](#) from the COVID-19 Testing and Screening Advisory Panel entitled “Priority Strategies to Optimize Testing and Screening for COVID-19 in Canada”. Since late 2020, many Canadian jurisdictions have received supplies of rapid tests, with a goal of identifying and isolating cases of COVID-19. As the availability and use of innovative testing options expand, the Action Committee has considered how rapid tests could be used in the court setting, with the goals of reducing transmission, preventing outbreaks, building public confidence that courts are safe to attend in person, and mitigating delays to court proceedings.

Potential scenarios for the deployment of rapid tests in a court setting uses may include

- Testing symptomatic participants in court proceedings to isolate them more quickly
- Repeated testing of court officials, counsel, law enforcement and corrections officers involved in in-person court proceedings, especially in jurisdictions with higher prevalence of infection
- Repeated testing of jurors and potential jurors to facilitate in-person jury trials
- Repeated testing of itinerant judges and court personnel who travel to remote and rural regions where an outbreak could overwhelm local capacity

There are a number of foreseeable challenges and outstanding questions related to the use of rapid tests in this setting, including

- The availability and distribution of rapid tests, including home-based tests
- Identifying who would administer the rapid tests for participants in court proceedings
- Appropriate training and biosafety measures (e.g., personal protective equipment) to safely administer rapid tests, handle samples and dispose of testing materials
- Who might be the candidates for testing in any given scenario
- Documentation/identification required to demonstrate eligibility for a test
- Establishing parameters for compliance (voluntary/mandatory)
- Privacy considerations, and
- The need for clear communications about the limitations of rapid testing, interpretation of positive and negative test results, and the importance of maintaining public health precautions

Pilot projects to work through these issues and to test the utility of rapid testing for participants in court proceedings may be a useful starting point. Design and administration of such initiatives should occur in collaboration with, and under the supervision of, local public health authorities.



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All those who gather in Canada's courts must continue to have confidence that appropriate measures are being taken to protect their health and safety. To meet this expectation, all available options should be explored.

RESOURCES AND REFERENCES

Public Health Agency of Canada

- [Interim guidance for the detection of SARS-CoV-2 with the Abbott Panbio COVID-19 antigen rapid test](#)
- [Interim Guidance on the Use of Rapid Antigen Detection Tests for the Identification of SARS-CoV-2 Infection](#)
- [Pan-Canadian COVID-19 Testing and Screening Guidance: Technical Guidance and Implementation Plan](#)
- [Testing devices for COVID-19: Antigen testing devices](#)
- [Testing for COVID-19: When to get tested and testing results](#)

Other Resources

- Public Safety Canada: [Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic](#)
- Health Canada: [Priority Strategies to Optimize Testing and Screening for COVID-19 in Canada: Report](#)
- Public Health Ontario: [Conducting COVID-19 PCR Testing at PHO](#)