



**Practice Direction
Nelson - Kootenay District**

Effective March 2, 2010

Criminal Caseflow Management Rules (“CCFM”)

**Arraignment and Trial Confirmation Hearings,
Compliance and Administrative Court Sitings**

There are three objectives to this directive. The first is to authorize Judicial Case Managers (“JCMs”) by assignment to deal with virtually all administrative and remand matters (including Arraignment and Trial Confirmation Hearings). This will ensure that increased judicial time is available for trials and hearings as opposed to remands and adjournments.

The second objective is to provide a simplified and efficient means of scheduling breach matters in order to secure their timely determination.

The final objective is to provide a prompt hearing where there has been a failure, on the part of counsel or an accused, to comply with the Criminal Caseflow Management Rules (CCFM) that require senior judicial attention in order to address issues that lead to backlog in the justice system.

Nothing in this Practice Direction limits or abrogates the authority of a Provincial Court Judge to deal with matters under the CCFM.

For the purpose of this Direction, the Practice Direction of November 25, 2003 regarding Arraignment Hearings is rescinded. I make the following Practice Direction under Rule 3 of the Criminal Caseflow Management Rules:

This Court is implementing two projects at the Nelson Courthouse:

- 1) an addition to the assignment of designated JCMs to hear and deal with Arraignment and Trial Confirmation Hearings;
- 2) specific sittings for the hearing of matters arising from the breach of Court Orders that have been filed in the Nelson Registry and failure to comply with the CCFM. (All stand alone summary conviction charges arising from the alleged contravention of any form of interim release, failure to attend court, failure to appear and failure to comply with probation, as well as allegations of breach of Conditional Sentence are subject to this Direction). These sittings will be referred to as “Compliance Court” and “Administrative Court”.

The key characteristics of these projects and the assignments of which counsel should be aware are as follows:

Arrestment and Trial Confirmation Hearings before JCMs

1. For the purpose of this Practice Direction, “Administrative Judge” means the Administrative Judge for the Kootenay District, or another judge assigned by the Administrative Judge.
2. The JCM will conduct CCFM appearances, take guilty pleas and take elections (except elections from unrepresented persons) with guilty pleas confirmed in front of a judge; issue publication bans pursuant to s.517 or s. 486.4 of the *Criminal Code*, and, where uncontested, release/remand accused persons; amend Informations; vacate bench warrants; vacate trial dates at (or prior to) a Trial Confirmation Hearing.
3. If a guilty plea is entered before the completion of an Arrestment Hearing, the sentencing will either proceed on the date of plea or, if that cannot occur, be adjourned by the JCM to a specific date within 30 days, before a judge on a specific date that has been jointly requested by both defence and Crown.
4. The arrestment process must be completed within 60 days of the Initial Appearance for offences proceeding summarily and within 90 days for offences proceeding by indictment unless a longer completion period is approved by the Administrative Judge.
5. When a warrant is executed following a failure to appear, the timeline to complete the process may, in the discretion of the JCM or the Administrative Judge, be extended.
6. A Trial Confirmation Hearing must be completed and the trial date confirmed not less than 30 days before the trial, unless the trial date has been adjourned before that time or the Administrative Judge has approved an extension of time for completion of the hearing.
7. If a JCM is unable to confirm a scheduled trial date with counsel at a Trial Confirmation Hearing, the JCM will adjourn the matter to Administrative Court.
8. If any of the timelines established under this Practice Direction are exceeded with respect to any Information, or if the JCM otherwise deems it appropriate, the matter will be adjourned over to Administrative Court.
9. When Trial Confirmation Hearings are adjourned to Administrative Court by the JCM, counsel will be expected to show cause why the trial date should not be struck and reset.
10. All trial adjournment requests will be adjourned to Administrative Court by the JCM.
11. No files will be added to a Court list without prior JCM approval or a judge.

12. For any Initial Appearance, adjournment of an Arraignment Hearing or Trial Confirmation Hearing, a JCM may authorize counsel to appear by telephone, facsimile, email or other telecommunication means provided:
 - (a) a request, in writing, is received by the JCM no later than 12:00 noon of the court sitting day prior to the scheduled appearance date;
 - (b) the timelines established by this Direction are not exceeded; and
 - (c) counsel are fully instructed and on the record for the accused.

Compliance Court:

1. The Administrative Judge will assign dates for Compliance Court sittings.
2. When any Information contains a stand alone allegation of breach of bail, probation, failure to report, comply or attend as required by a Court Order which is proceeding summarily, or a breach of a Conditional Sentence Order is alleged (Breach Allegations) and those matters are not resolved by a plea or stay of proceedings within 30 days of the Initial Appearance, the JCM will complete the arraignment process, record a plea to the charge or allegation, and adjourn the Breach Allegation for trial to a date and time designated for a Compliance Court sitting.
3. JCMs will adjourn matters for disposition before a judge on a specific date when jointly requested by both Defence and Crown, if a guilty plea is entered within 30 days of the Initial Appearance and the matter can be heard within 30 days.
4. Any applications for exemption or dispensation from this Direction will be made to a Judge in Administrative Court.
5. Breach Allegations will be exempt from CCFM Rules with respect to Arraignment Reports, Arraignment Hearings, Trial Readiness Reports, Trial Confirmation Hearings unless otherwise ordered by the Administrative Judge.

Administrative Court:

1. Administrative Court will be presided over by the Administrative Judge as defined earlier in this Practice Direction.
2. In addition to those matters identified earlier in this Practice Direction, and upon request of counsel and/or at the discretion of the JCM, a matter may be adjourned to Administrative Court for direction regarding matters such as Crown disclosure, Defence access to information and other related matters.
3. A JCM may adjourn other matters to Administrative Court with the approval of the Administrative Judge.

THE COURT'S EXPECTATION OF COUNSEL

Arrestment Hearings and Trial Confirmation Hearings

1. It is expected that counsel will have fully canvassed admissions and trial estimates before appearing before the JCM;
2. Arrestment Hearings and Trial Confirmation Hearings are expected to be single events before a JCM and are not expected to be adjourned for further preparation except in extraordinary circumstances;
3. With regard to arrestment matters referred to Administrative Court, counsel are expected to explain why they have been unable to enter pleas, elections or to set trial dates. The presumption will be that matters will stay in Administrative Court until they move on in the process as determined by the Administrative Judge;
4. At all times, the Court and counsel must know who speaks on a file and that such person has the necessary authority to deal with matters before the Court;
5. If a matter is proceeding by way of alternative measures, the Court expects that no more than one adjournment beyond the timelines established in this Practice Direction will be required to complete the alternative measures process.

Compliance Court

1. Counsel will be canvassed by the JCM as to admissions and time required for hearing.
2. It is the expectation of the Court that Counsel, appointed subsequent to an unrepresented accused entering a not guilty plea and the matter having been set for trial, will make themselves available for the trial date set.

Administrative Court

1. The expectation is that either trial Crown, or a senior Crown counsel fully briefed with respect to all matters regarding the file, will attend Administrative Court, as will counsel for the Accused. No agents will be permitted to attend except with the permission of the Administrative Judge.
2. The trial Crown, or senior Crown counsel, fully briefed with respect to all matters regarding the file, and Defence counsel are expected to explain why pleas have not been entered, elections made, trial dates set or trial dates confirmed.

3. There is an expectation that cases will have a maximum of four scheduled appearances between the first appearance and the scheduling of a matter for disposition or trial.

Yours truly,

N.N. Phillips
Acting Chief Judge