

# Provincial Court of British Columbia



Effective Date: 01 Dec 2013  
No. 2013/CPD-1

## PRACTICE DIRECTION

### **Criminal Caseflow Management Rules Simplified Front End Criminal Process (2013)**

#### **Purpose**

The Criminal Caseflow Management Rules (CCFM Rules) were first approved by OIC 1356/99 pursuant to section 482(2) of the *Criminal Code of Canada*. The objectives of these rules included reducing time to trial, more effective use of judicial resources and increasing accessibility of the Court.

In 2012, the Court began the Provincial Court Scheduling Project which, in its first phase, focused on simplifying the front-end process. To support the changes, the CCFM Rules were amended in 2013, see OIC 484/2013. The Court continues to be committed to the efficient, effective and equitable use of judicial resources and the simplification of the process with the goals of improving accessibility and supporting the administration of justice in the province. The 2013 revisions reduce administrative processes by returning case management responsibility to counsel; supporting the introduction of the new trial scheduling platform; and allowing the Court to introduce new efficiencies to make the best use of judicial resources.

This Practice Direction supports the objectives of the 2013 revision to the rules and process. These directions will be interpreted in a manner consistent with the intention and spirit of the requirements of the *Criminal Code of Canada* and the CCFM Rules. I make the following Practice Direction pursuant to my authority under the *Provincial Court Act*, R.S.B.C. 1996, c. 379, and Rule 3 of the CCFM Rules.

## **Rescind**

1. The CCFM Practice Directions set out in Appendix A are rescinded.

## **Application**

2. These directions apply to all criminal proceedings in the Provincial Court including to proceedings in specialty and therapeutic courts to the extent that the directions are not inconsistent with directions or protocols specific to that court.

## **Definitions**

3. The following definitions apply to this Practice Direction:
  - a. “**JCM**” or “**JCMs**” means Judicial Case Manager(s);
  - b. “**specialty and therapeutic courts**” include Downtown Community Court (Vancouver), Drug Treatment Court, First Nations Courts, Victoria Integrated Court, Cowichan Domestic Violence Court and other similar types of court;
  - c. “**YCJA**” means *Youth Criminal Justice Act*.
4. The JCM is a “trial scheduler” as defined in the CCFM Rules.
5. Where appropriate and reasonable, a reference to Defence Counsel or, more generally, counsel, may be interpreted to include self-represented accused. For clarity, this provision does not apply to paragraph 49 of this direction.

## **Judicial Case Managers**

*One of the objectives of the Court is to improve the use of judicial resources by assigning most administrative and remand matters to JCMs. A full description of the authority of JCMs is set out in the Chief Judge’s JCM Assignment of Duties available at: <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/practice-directions>.*

6. The JCM may adjourn a matter to a later date or to appear before a Judge for direction at the JCM’s discretion.
7. The JCM may direct timeframes for a matter following discussion with both Crown and Defence Counsel.

8. The failure to comply with any direction of a JCM may result in the matter being referred by the JCM to a Judge.

### **Initial and subsequent appearances**

*A further objective of the Court is to move matters from the first appearance through to a scheduled date in a timely manner. For this reason, most appearances will be before a JCM. JCMs will schedule matters for appearance before a Judge when necessary. Counsel may request a scheduled appearance before a Judge or may request that a scheduled appearance be moved before a Judge (see Scheduling an appearance before a Judge in this direction).*

9. Subject to paragraph 15, all out-of-custody, non-contested appearances will be heard before a JCM.
10. Subject to paragraph 11, an in-custody accused may appear before a JCM in the following manner:
  - a. video, if available in the institution;
  - b. by counsel appearing as agent or designated counsel; or
  - c. other means, such as telephone, when approved in advance by the JCM.
11. Counsel must notify the Court Registry no later than 12:00 noon of the business day prior to the scheduled appearance of an in-custody accused for approval and instructions on arranging an alternate form of appearance as contemplated in paragraph 10a and c.
12. Counsel is responsible for notifying the opposing counsel upon receiving JCM approval for an alternate form of appearance by an in-custody accused.
13. An accused, whether in-custody or out-of-custody, may be represented before a JCM by:
  - a. designated counsel; or
  - b. agent (including duty counsel).
14. In general, in-person appearances of an in-custody accused will be heard before a Judge.
15. The JCM will refer a matter to a Judge:
  - a. if the matter is being heard before the JCM and a contested issue emerges;
  - b. an accused wishes to enter a guilty plea and deal with sentencing; or
  - c. for any other reason at the JCM's discretion.

## **Appearance of counsel**

*It is important to note that alternate forms of appearance cannot be accommodated in all locations. This direction does not require JCMs to accommodate alternate forms of appearance. The availability of alternate types of appearances may vary by location.*

16. When counsel wishes to attend an in-person scheduled appearance before a JCM by an alternate means, counsel must request prior JCM approval.

17. The process for requesting approval to appear by alternate means is as follows:

- a. No later than 12:00 noon of the business day prior to the scheduled appearance:
  - i. submit a request in-person at the JCMs Office, or
  - ii. submit a request by email or facsimile (if available in the location) to the JCM with the following details
    1. the reason for the request,
    2. the alternate means to be used, and
    3. in the case of a telephone appearance, the telephone number at which counsel may be reached for the appearance.
- b. The telephone number provided to the JCM for the purposes of the appearance must be a direct land-line number or a mobile telephone number with acceptable sound quality.

18. Counsel should notify opposing counsel upon receiving JCM approval to appear by alternate means.

19. The Court may cancel the appearance by alternate means and require an in-person appearance by counsel at the Court's discretion.

## **Scheduling by JCM**

20. Appearances before the Court that will be scheduled by a JCM include:

- a. matters for sentencing;
- b. JCM referrals of matters for appearance before a Judge;
- c. JCM approved requests of counsel for an appearance before a Judge;
- d. contested issues;
- e. applications;

- f. pre-trial conferences;
- g. interim appearances; and
- h. trials or preliminary inquiries.

21. When a matter being heard by a JCM is referred by the JCM to a Judge, the matter may be heard that day provided it can be accommodated by the Court and counsel are available, otherwise the matter will be scheduled to another day.

22. On matters where Crown is assigned, the JCM will take into account the assigned Crown's availability when scheduling events.

23. On matters where Crown will not be assigned, Defence Counsel may request a trial date at or after the first appearance. The JCM may set a date at that time.

### **Scheduling an appearance before a Judge**

*Counsel may request that a matter be set before a Judge by contacting a JCM in the JCM Office.*

*An objective of these directions is to move matters from first appearance to a conclusion in a timely manner. If either counsel is concerned about delay, counsel may bring the matter to the attention of a JCM. The JCM will work with counsel to improve timeliness. When appropriate, the JCM will schedule the matter for appearance before a Judge. (Also see Timeframes in this direction.)*

24. The JCM may schedule a matter for appearance before a Judge:

- a. upon a request from Crown or Defence Counsel; or
- b. at the discretion of the JCM.

25. Counsel may request a scheduled appearance before a Judge by delivering **Form 1 (CPD 1) Consent Requisition** to the JCM in the JCM Office in one of the following ways:

- a. attending at the office in person;
- b. by email; or
- c. if available in the location, by facsimile.

26. The JCM will notify Defence Counsel and assigned Crown, if any, when a matter is to be scheduled for appearance before a Judge pursuant to paragraph 24.

## **Changing Non-Trial Appearance Date**

*The purpose of this section is to provide a convenient means for counsel to contact a JCM to cancel or reschedule an appearance.<sup>1</sup>*

*Note that the Court expects counsel to contact the JCM when an adjournment is required: see paragraphs 38 and 39 of this direction.*

*Also, during the initial period of operation under the 2013 Rules and these directions, **Form 1 (CPD-1) Consent Requisition** may be used to cancel Trial Confirmation Hearings (see Transition for matters proceeding on December 1, 2013 and after *in this direction*).*

27. In addition to scheduling an appearance, counsel may use **Form 1 (CPD-1) Consent Requisition** for the following purposes:

- a. to change an appearance date;
- b. to cancel an interim appearance; or
- c. to request an earlier appearance.

28. Counsel may submit **Form 1 (CPD-1) Consent Requisition** to a JCM in the JCM Office in one of the following ways:

- a. attending at the office in person;
- b. by email; or
- c. if available in the location, by facsimile.

## **Alternate Forms of Appearance**

*These provisions allow alternate forms of appearance for varying bail, for remand and for arraignment. The Court expects counsel will use the forms whenever possible for matters that come before a JCM. This practice will support the objective of promoting processes that use court resources effectively.*

***Form 4 (CPD-1) Consent Arraignment** will only be available for use in Victoria until further notice from the Court: see Transition for matters proceeding on December 1, 2013 and after (paragraph 55) in this direction.*

***Form PCR 317** will be used as **Form 2 (CPD-1) Application to Vary Bail by Consent** until further notice from the Court.*

29. A form of appearance, other than an in-person appearance, may be requested by submitting the relevant form, **Form 2 (CPD-1) Application to Vary Bail by Consent**,

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<sup>1</sup> All forms are attached to this direction in Appendix B and available from the Provincial Court at <http://www.ag.gov.bc.ca/courts/criminal/info/forms.htm>

**Form 3 (CPD-1) Consent Remand** or **Form 4 (CPD-1) Consent Arraignment**, to a JCM in the JCM Office in one of the following ways:

- a. attending at the office in person;
- b. by email; or
- c. if available in the location, by facsimile.

30. If the JCM is not satisfied that a form submitted by counsel is complete or meets the requirements of the appearance, counsel will be required to attend in Court or resubmit the form in a manner satisfactory to the JCM.

#### *Application to Vary Bail by Consent*

31. **Form 2 (CPD-1) Application to Vary Bail by Consent** may be used when Crown and Defence Counsel agree to a bail variation pursuant to section 503(2.2) or section 515.1 *Criminal Code of Canada*.

#### *Consent Remand*

32. **Form 3 (CPD-1) Consent Remand** may be used by Defence Counsel, under instructions from her/his client, seeking an adjournment of a bail hearing or by Crown, with the agreement of Defence Counsel, seeking a remand under section 516 *Criminal Code of Canada*.

33. **Form 3 (CPD-1) Consent Remand** will, generally, be used the day the accused is scheduled to appear before the Court in-custody. Where counsel wish to change a non-trial appearance of an in-custody accused prior to the scheduled appearance date, counsel may use **Form 1 (CPD-1) Consent Requisition** in place of **Form 3(CPD-1) Consent Remand**.

#### *Consent Arraignment*

34. **Form 4 (CPD-1) Consent Arraignment** may be used when Crown and Defence Counsel:

- a. have discussed the matter;
- b. are in agreement that the matter is ready to be set for trial, preliminary inquiry, sentencing or other hearing; and
- c. agree that an in-court arraignment or appearance is not required.

35. **Form 4 (CPD-1) Consent Arraignment** must be submitted to the JCM no later than 12:00 noon of the business day prior to the scheduled appearance.

36. **Form 4 (CPD-1) Consent Arraignment** may not be used for YCJA matters.

### **Court's Expectations of Counsel**

*A goal of this direction is to use judicial resources efficiently through a reduction in the number of administrative tasks brought before the Court.*

*Counsel is expected to communicate effectively with one another for the effective management of their files.*

*Counsel is expected to notify the JCM promptly when it becomes apparent that an appearance will be adjourned or scheduled Court time is no longer required.*

37. It is the responsibility of counsel contacting a JCM for any of the reasons referred to in this direction to ensure that the communication comes to the attention of the JCM responsible for scheduling the matter, in a timely manner.

38. When counsel becomes aware that an adjournment of a coming appearance is required, counsel is expected to contact the JCM as soon as possible to request a new appearance date. (See *Changing Non-Trial Appearance Date* in this direction)

39. Counsel is expected to contact the JCM as soon as possible before the trial or hearing date in the event of an adjournment application (contested or uncontested) of a scheduled trial or hearing date. Counsel may contact the JCM in the JCM Office in one of the following ways:

- a. attending at the office in person;
- b. by email;
- c. if available in the location, by facsimile; or
- d. by telephone.

40. Counsel should follow-up, in writing, with opposing counsel to confirm all requests made to a JCM relating to dates, adjournments, disclosure, reports or other matters relevant to the conduct of the file.



## **Timeframes**

*An objective of these directions is to leave the responsibility for file management with counsel. The Court expects counsel to begin communication with one another early and continue to communicate effectively throughout the process leading to trial or other disposition. The Court's role is to provide guidance that assists counsel in moving matters forward in a timely manner. While strict timeframes and rules will not be created, the Court will take an active role in the management of a file if the Court's expectations of counsel are not being met.*

41. The Court expects that simple (summary) matters will progress from first appearance to arraignment in 60 days; more complex matters will progress in 90 days.
42. The arraignment process for all YCJA matters must be completed within 60 days of the initial appearance.
43. The JCM may schedule the matter for appearance before a Judge if the JCM is of the view the matter is not progressing in a timely manner.
44. Either counsel may request direction from the JCM on timeframes or make a request to the JCM that the matter be scheduled for an appearance before a Judge if the matter is not progressing in a timely manner. The JCM may work with counsel to resolve problems relating to the progress of a file prior to scheduling an appearance before a Judge.

## **Interim appearance**

*There may be situations where it is appropriate to have a pre-trial appearance before a Judge or JCM to ensure trial readiness. At the time of scheduling the trial/preliminary inquiry date, the JCM may consult with counsel to determine whether an interim appearance is required. If an interim appearance is required, the JCM will schedule an interim appearance in addition to setting the date for trial/preliminary inquiry.*

45. Situations where an interim appearance before a Judge or JCM may be set include:
  - a. an accused is representing her/himself;
  - b. where the trial or preliminary inquiry is expected to take more than three (3) days;
  - c. the JCM determines, after consultation with counsel, an interim appearance is required.

46. Counsel may request an interim appearance before a Judge or JCM by contacting the JCM in the JCM Office in one of the following ways:
- a. attending at the office in person;
  - b. by email;
  - c. if available in the location, by facsimile; or
  - d. by telephone.
47. An interim appearance will not be set for matters proceeding summarily unless the JCM determines an interim appearance is required.

### **Alternative Measures (Diversion)**

48. As matters proceeding by alternative measures may not progress within the timeframes anticipated in this direction, the JCM has discretion regarding setting timeframes and allowing adjournments when both counsel consent.

### **Notice**

49. Any requirement to provide notice or to provide a response to opposing counsel is satisfied if sent by email to the email address provided by that counsel for the purpose of notice.

### **Transition for matters proceeding on December 1, 2013 and after**

50. Arraignment hearings fixed under the former CCFM Rules but set for a date on December 1, 2013 or after will be treated as arraignment events as required under the *Criminal Code of Canada* and not arraignment hearings under the former CCFM Rules.
51. The Arraignment Report required under the former CCFM Rules for arraignment hearings will not be required for an arraignment event set for a date on December 1, 2013 or after.
52. Trial confirmation hearings fixed under the former CCFM Rules but set for a date on December 1, 2013 or after will be treated as an appearance date to confirm the trial will be proceeding (confirm trial date appearance).
53. The Trial Readiness Report required under the former CCFM Rules for trial confirmation hearings will not be required for a confirm trial date appearance set for a date on December 1, 2013 or after.

54. Where counsel are in agreement that a confirm trial date appearance set for a date on December 1, 2013 or after is not required, counsel may file **Form 1 (CPD-1) Consent Requisition** in the manner set out under *Changing Non-Trial Appearance Date* in this direction.
55. Until further notice from the Court, **Form 4 (CPD-1) Consent Arraignment** will only be available for use in Victoria as of December 1, 2013.

**Appendices A and B follow on next page**

## APPENDIX A

<b>Table of Practice Directions Rescinded December 1, 2013</b>	<b>Date of Practice Direction</b>
Victoria (South Vancouver Island) CCFM - Reducing the Number of Appearances prior to an Arraignment Hearing	25 October 2010
Vernon (Okanagan) CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	3 May 2010
Penticton – Okanagan CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	6 April 2010
Arraignment TCH - Nelson-Kootenay District - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	2 March 2010
Dawson Creek – CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	10 January 2010
Kamloops - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	4 January 2010
Victoria – South Vancouver Island District CCFM - Arraignment and Trial Confirmation Hearing	1 December 2009
Victoria Youth Project CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	1 October 2009
Fort St. John – Cariboo Northeast District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	12 August 2009
Vancouver Criminal District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	4 May 2009
Prince George – Cariboo Northeast District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	16 February 2009

<b>Table of Practice Directions Rescinded December 1, 2013</b>	<b>Date of Practice Direction</b>
Williams Lake – Cariboo Northeast District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	5 January 2009
Robson Square Youth Justice Court CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	3 November 2008
Quesnel – Cariboo Northeast District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	1 October 2008
Kelowna – Okanagan District - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	5 May 2008
Colwood – South Vancouver Island District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	10 April 2008
Duncan – South Vancouver Island District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	6 May 2008
Prince George – Cariboo Northeast District CCFM - Compliance Court Sitings	4 February 2008
Port Coquitlam – North Fraser District - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	4 February 2008
Judicial Case Managers Assigned to the Pilot Projects by the Administrative Judge Assignment of duties pursuant to s. 11 of the <i>Provincial Court Act</i>	18 June 2007
Victoria and South Vancouver Island District CCFM - Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings	18 June 2007
Arraignment Hearings CCFM	25 November 2003
Elections CCFM	25 November 2003
Out-of-Town Counsel Attending Arraignment Hearing CCFM	10 February 2000
Adjustments to Arraignment Process	20 October 2000
Arraignment Process – Rule 5(4) CCFM	20 October 2000

<b>Table of Practice Directions Rescinded December 1, 2013</b>	<b>Date of Practice Direction</b>
Transition to the New Criminal Process to be enacted pursuant to s. 482(2) C.C.	27 May 1999

## APPENDIX B

**Form 1 (CPD-1)** *Consent Requisition*

**Form 2 (CPD-1)** *Application to Vary Bail by Consent* [Note: **Form PCR 317** will be used as **Form 2 (CPD-1)** *Application to Vary Bail by Consent*]

**Form 3 (CPD-1)** *Consent Remand*

**Form 4 (CPD-1)** *Consent Arraignment*