



Practice Direction
Victoria - South Vancouver Island District
Effective December 1, 2009

Criminal Caseflow Management Rules (“CCFM”)

Arraignment and Trial Confirmation Hearings

The criminal process reform initiatives have been in operation in the Victoria courthouse since June 2007. While progress has been made in achieving the goals outlined in the Practice Direction of June 18, 2007, the objective of this directive is to assist counsel in better meeting those goals while more effectively conducting arraignment and trial confirmation hearings, without the necessity of an in-person court appearance.

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the Practice Direction of June 18, 2007 as far as it pertains to Arraignment and Trial Confirmation Hearings, is rescinded and replaced with the following:

I make this Practice Direction under Rule 3 of the Criminal Caseflow Management Rules:

This Court is operating a criminal process reform initiative at the Victoria Courthouse that provides for an addition to the assignment of designated JCMs to hear and deal with arraignment and trial confirmation hearings. The key characteristics of this criminal process reform of which counsel should be aware are as follows:

Arraignment and Trial Confirmation Hearings before JCMs:

1. For the purpose of this Practice Direction, “Administrative Judge” means the Administrative Judge for the South Vancouver Island 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. A JCM *may*, on a pilot basis and upon application by defence counsel, conduct arraignment and trial confirmation hearings by email provided that:
 - The case is within the prescribed time frame set out elsewhere in this Practice Directive;
 - There have been four or fewer appearances between the first appearance and the scheduled hearing,
 - After defence counsel first appears on the record, all adjournments are conducted by means of e-mail;
 - The process for conducting an arraignment or trial confirmation hearing by email, (attached to this Practice Direction as **Appendix "A"**) is followed by counsel;
 - Crown is not taking the position that the matter is of such public importance that all appearances need to be made in open court, and
 - If the JCM is not satisfied that all of the expectations of an arraignment hearing or trial confirmation hearing have been met, that counsel will be required to attend court, in person, to conduct the hearing.
4. If a guilty plea is entered and the matter can be heard within 30 days, a JCM may adjourn matters for disposition before a judge on a specific date, when jointly requested by both defence and Crown.
5. The arraignment 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.
6. When a warrant is executed following a failure to appear, the timeline to complete the process may be extended in the discretion of the JCM or the Administrative Judge.
7. 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.
8. 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.

9. 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, a matter will be adjourned over to Administrative Court.
10. With regard to trial confirmation hearings referred to Administrative Court, counsel will be expected to show cause why the trial date should not be struck and reset.
11. All trial adjournment requests will be adjourned to Administrative Court by the JCM.
12. No files will be added to a court list without JCM approval or that of a judge.
13. a) For any initial appearance, adjournment of an Arraignment Hearing or Trial Confirmation Hearing, a JCM may allow counsel to appear by telephone, email, facsimile or other telecommunication means provided:
 - a request to do so is received in writing by the JCM no later than 10 a.m. of the court sitting day prior to the scheduled appearance date;
 - the timelines established by this Direction are not exceeded; and
 - counsel are fully instructed and on the record for the accused.
- b) A JCM may, upon application by defence counsel, conduct Arraignment and Trial Confirmation Hearings by email provided that:
 - The case is within the prescribed time frame set out elsewhere in this Practice Directive;
 - There have been four or fewer appearances between the first appearance and the scheduled hearing, and
 - After defence counsel first appears on the record, all adjournments are conducted by means of e-mail;
 - The process for conducting an arraignment or trial confirmation hearing by email, (attached to this Practice Direction) is followed by counsel;
 - Crown is not taking the position that the matter is of such public importance that all appearances need to be made in open court;
 - If the JCM is not satisfied that all of the expectations of an arraignment hearing or trial confirmation hearing have been met, that counsel will be required to attend court, in person, to conduct the hearing.

14. If the JCM grants an application for an Arraignment or Trial Confirmation Hearing by email, the JCM will cancel future AHR or TCH dates and will confirm same to both Defence and Crown counsel by return email and will notify the Registry to cancel the dates.
15. Any election will be recorded by the JCM on the Record of Proceedings by personally attending at the Court Registry.
16. All reports and assurances to the Court will form part of the court file.

The Court's Expectations of Counsel

Arraignment Hearings and Trial Confirmation Hearings

Expectations of the Court:

1. It is expected that counsel will have fully canvassed admissions and trial estimates before appearing before the JCM;
2. Arraignment 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 arraignment 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.

Arraignment and Trial Confirmation Hearings Conducted by Email:

Expectations of the Court:

1. Defence counsel will bring the application within the timeframes set out in the Practice Direction; there will be 4 or fewer appearances from the first appearance until the scheduled date, and after defence counsel is on the record, all appearances will be by email.

2. Defence counsel will initiate discussions regarding Arraignment and Trial Confirmation Hearings by email with Crown counsel and Crown will have counsel identified for the purpose of such discussions.
3. Crown counsel and defence counsel will complete their respective Arraignment Hearing Report (AHR) or Trial Readiness Report (TRR), including the Arraignment Hearing (AH) or Trial Readiness (TR) Assurance to Court.
4. Defence counsel will email their AHR or TRR to Crown counsel along with the AH or TR Assurance to Court.
5. Crown counsel will execute the Assurance provided by Defence counsel and will email it back to Defence counsel along with Crown counsel's AHR or TRR.
6. Defence counsel will forward both Crown and Defence counsels' AHR or TRR and relevant Assurances to the JCM for consideration.
7. All reports and assurances to the Court will form part of the court file.

Jim J. Threlfall
Acting Chief Judge

APPENDIX "A"

Process for Conducting an Arraignment or Trial Confirmation Hearing by Email

Process to be conducted by email only;

Subject to reform objectives being met: no more than 4 appearances once counsel on record for accused and e-adjourment process utilized;

Defence counsel to initiate discussion with Crown counsel; Crown will have a Crown identified for such discussions;

Crown and Defence fill in their respective Arraignment or Trial Readiness Report following discussions;

Defence EMAILs to Crown their Arraignment Hearing Report (AHR), or Trial Readiness Report (TRR), including the Arraignment Hearing (AH) or Trial Readiness (TR) Assurance to Court;

Crown to sign off the Assurance provided by Defence and EMAIL back to Defence counsel including THEIR AHR or TRR;

At this stage both Crown and Defence have seen each other's reports and the Assurance to Court;

If Defence counsel wishes to continue with application to have an electronic AH or TCH, they will forward Crown and Defence AHR or TRR including appropriate Assurance to Court to JCM for consideration. The JP/JCM retains discretion to accept or deny the application;

The current e-adjourment email addresses remain the same;

If application granted, JCM will cancel future AHR or TCH date and confirm to both Defence and Crown by return email;

Registry will be notified to CANCEL upcoming date;

Any election will be recorded by JP/JCM directly onto the Court record of proceedings by personally attending at the Court registry;

If AH, matter will be adjourned for 1 week to fix a date for trial/hearing/PI/snt;

If TCH, matter will be confirmed in Justin with remarks entered by the JCM stating that matter will proceed as scheduled;

All reports and assurances to the court will form part of the court file.