



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Effective date: 28 September 2020

CRIM 12

PRACTICE DIRECTION

CRIMINAL PRE-TRIAL CONFERENCES DURING COVID-19

Background

In [*R. v. Jordan*](#), 2016 SCC 27, the Supreme Court of Canada told all participants in the criminal justice system they have “a role to play in changing courtroom culture and facilitating a more efficient criminal justice system” (at para. 45). Participants were directed to engage in “proactive, preventative problem solving” (*supra*, at para. 112) and encouraged to “eliminate or avoid inefficient practices” (*supra*, at para. 117).

Since these directions in *Jordan*, over three quarters of all criminal files set for trial in Provincial Court collapsed on the scheduled trial date because of guilty pleas, stays of proceedings, bench warrants or adjournments. In this same timeframe, only 4% of all criminal files actually proceeded to a hearing in the Provincial Court. These statistics reveal that too many criminal files are set for trial and do not proceed causing significant scheduling difficulties and inefficient use of court time.

These concerns are amplified in light of the COVID-19 pandemic. The Provincial Court is implementing this practice direction to help address these concerns by mandating pre-trial conferences for criminal files (adult and youth) at all Provincial Court locations in the Province. This practice direction also represents one of the steps the Court is taking to resume court operations during the COVID-19 pandemic while ensuring public health continues to be protected.

Purpose

There are two main purposes behind these pre-trial conferences. The first is to reduce the number of files being set for trial by helping to ensure that only those requiring a trial are actually set for hearing. The second purpose is to manage those files that are to be set for trial to ensure that accurate time estimates have been determined prior to dates being set and ensure hearings complete on time as scheduled.

The practice direction's overarching aim is to reduce these inefficiencies in the criminal justice system by employing pre-trial conferences as a tool for the participants to collaborate and conduct cases more efficiently for the overall benefit of the administration of justice. The Court is committed to ensuring the fair, efficient and timely resolution of criminal files and to upholding the accused's right to be tried within a reasonable time. Using pre-trial conferences to help reduce day of trial collapse rates and trial continuations is an important part of that commitment.

Application

This practice directive applies to adult and youth criminal files in the Provincial Court as follows:

1. Criminal trials, preliminary inquiries, and continuations of trials and preliminary inquiries originally scheduled during March 16 to May 16, 2020 ("COVID #1") and May 19 to July 3, 2020 ("COVID #2"), excluding summary proceedings court files;
2. All new adult and youth files with charges occurring during COVID #1 and COVID #2, excluding summary proceedings court files;
3. All new adult and youth files with charges occurring after July 3, 2020 requiring more than one day of trial time;
4. Criminal trials and preliminary inquiries scheduled to start commencing July 6, 2020 and onwards requiring more than one day of trial time that are not able to proceed due to lack of court time or are otherwise adjourned and have not previously had a pre-trial conference pursuant to this Practice Direction;
5. All new adult and youth files with charges occurring after July 3, 2020 requiring one day of trial time where a pre-trial conference is requested by both counsel.

All files set out in 1 and 4 above must have a pre-trial conference before a new trial or preliminary inquiry date is scheduled. All files set out in 2 and 3 above must have a pre-trial conference before being scheduled for a trial or preliminary inquiry.

Where the accused has more than one criminal file with at least one file as described in 1, 2, 3, or 4 above, their other file(s) may be included in the pre-trial conference for resolution discussions. Counsel should provide these additional file numbers to the Judicial Case Manager when scheduling the pre-trial conference.

Effective September 28, 2020, this practice direction only applies to files where the accused is represented by counsel. Self-represented accused with trials requiring one day or more of trial time will have a pre-trial conference set before a judge, preferably the trial judge, approximately 8 to 10 weeks before the first date of trial for trial management purposes as described in [NP 19](#).

Directions

A. General

1. The pre-trial conference judge will not be the trial judge if the matter proceeds to trial. If the matter is resolved prior to trial, the disposition may be done by the pre-trial conference judge or assigned to another judge. Where multiple pre-trial conferences occur on a file, the pre-trial conferences will be conducted by the same judge unless that judge is unavailable.
2. Pre-trial conferences will take place during court sitting hours unless reasonable accommodation of counsel's schedule is required. Pre-trial conferences will be set in 30 to 45 minute intervals, although counsel may request additional time if they feel it will be required.
3. Unless otherwise ordered by the pre-trial conference judge, pre-trial conferences will be held via videoconference or audioconference and off the record.
4. Crown counsel with conduct of the file¹ ("Crown counsel") and counsel for the accused must attend all pre-trial conferences, unless the pre-trial conference judge directs otherwise.

B. Before the pre-trial conference

5. Before a pre-trial conference, Crown counsel and counsel for the accused must have:
 - a. Thoroughly reviewed their files, and
 - b. Discussed with each other the issues set out in paragraph 8.
6. The parties may provide, and are encouraged to provide, the opposite party and the pre-trial conference judge with any materials that may assist with resolution discussions and trial management issues. Unless the parties agree otherwise, these materials are to be used only for pre-trial conference purposes; these materials will not be added to the court file and will be returned to the submitting party if requested or destroyed when no longer necessary for those purposes. At a minimum, Crown counsel must provide a Crown Synopsis in [Form 1 \(CRIM 12\)](#), a copy of the Information Crown counsel is proceeding on, and any criminal record of the accused. At least three business days prior to a scheduled pre-trial conference, the parties must exchange copies of all materials for the pre-trial conference and must deliver, electronically or otherwise, a copy of those materials to the Judicial Case Manager at the applicable court location for the attention of the pre-trial conference judge.

¹ For the purpose of this Practice Direction, "Crown counsel with conduct of the file" may include the applicable "Intake Crown" until the "Trial Crown" is assigned.

7. If Crown counsel or counsel for the accused requests a preliminary inquiry, that party shall file a Statement of Issues and Witnesses in [Form 2 \(CRIM 12\)](#) unless otherwise ordered by the Court. The statement is to be filed with the Court preferably at the arraignment hearing.

C. At the pre-trial conference

8. At a pre-trial conference, the parties are required to have authority and be prepared to make decisions about:
 - a. resolution of the matter;
 - b. disclosure;
 - c. applications, including ones pursuant to the *Charter*, that the parties will bring at or before trial;
 - d. the number and identity of witnesses the Crown counsel intends to call at the preliminary inquiry or at trial;
 - e. any admissions the parties are willing to make;
 - f. any legal issues that the parties anticipate may arise in the proceeding; and
 - g. an estimate of the time needed to complete the proceeding.

Parties should review the [Pre-Trial Conference Checklist](#) for the types of issues that may be discussed at the pre-trial conference.

Commentary: *In order to ensure they are able to make decisions on these issues, counsel for the accused must have communicated with their client to obtain instructions. For Crown counsel, they must have communicated with any civilian witnesses essential to the viability of the prosecution (for example, sex assault complainants) in order to assess their reliability and level of interest in the matter as well as obtain any resolution input where that may be appropriate.*

The pre-trial conference judge will proactively canvass resolution in order to avoid setting trial dates. If the accused or their counsel require some time before proceeding to disposition, they should not be setting trial dates to obtain that time but rather pleading guilty and obtaining that time by adjourning the disposition. For Crown counsel, they need to be reasonable and realistic in their sentencing positions and exercise “enhanced discretion for resolving individual cases” (Jordan, para. 138). The pre-trial conference judge will also proactively canvass the issues to reduce them to only those requiring adjudication, and then determining both how much time will be required and how the file is to be scheduled. The intention is to ensure that those files that actually proceed to trial complete as scheduled thereby avoiding continuation dates that generate further delays in completing criminal proceedings.

D. After the pre-trial conference

9. After hearing from the parties during a pre-trial conference, the pre-trial conference judge may take one or more of the following steps:
 - a. make any case management directions or orders;
 - b. confirm or amend the estimates of the time required to hear the proceeding;
 - c. set timelines for the exchange of materials on applications to be heard, or for the completion of disclosure;
 - d. set parameters for the hearing of applications;
 - e. confirm any admissions made on the record and have all parties sign off on the admissions in writing;
 - f. adjourn to the Judicial Case Manager to set a date for:
 - i. a subsequent pre-trial conference;
 - ii. disposition;
 - iii. preliminary inquiry; or
 - iv. trial.
 - g. take any further steps or provide any further directions consistent with the purpose of this Practice Direction.
10. Following the conclusion of a pre-trial conference, any directions, admissions, agreements, or orders made at the pre-trial conference may be reduced to writing or otherwise recorded.
11. If the matter is confirmed or set for hearing, the pre-trial conference judge may direct that a pre-trial conference be set approximately two months prior to the first date of hearing to ensure the matter will still be proceeding on the scheduled dates.

Commentary: *The parties can again expect the pre-trial conference judge to proactively pursue resolution and trial manage the file at this pre-trial conference.*

12. If following a pre-trial conference, the matter is confirmed or scheduled for trial or preliminary inquiry, the pre-trial conference judge may complete a [Pre-Trial Conference Report](#) and have it placed in the court file. The Pre-Trial Conference Report will provide information the trial judge needs to know for conducting the trial, including any admissions, agreements, orders or trial scheduling directions made, and any issues that are expected to arise. If counsel wish to receive a copy of this Report, they can obtain it from the court file at the originating registry or they can request it be sent to them electronically by providing their e-mail addresses to the pre-trial conference judge at the pre-trial conference.

History of Practice Direction

- Original practice direction dated April 28, 2020.
- See also [NP 19 COVID-19: Resumption of Court Operations](#).
- The Supreme Court of British Columbia has issued [CPD-3, Criminal Practice Direction](#).
- Updated practice direction dated June 12, 2020 revising “Application” section and changing reference in para. A2 from “one hour” to “30 to 45 minute”.
- Updated practice direction dated July 2, 2020 revising “Application” section.
- Updated practice direction effective September 28, 2020 (revises “Application” section and makes consequential amendments; deletes Pre-Trial Conference Record and adds Pre-Trial Conference Checklist and Report); adds para. 12.

I make this practice direction pursuant to my authority under the *Provincial Court Act*, R.S.B.C. 1996, c. 379 and Rule 3 of the *Provincial Court of British Columbia Criminal Caseflow Management Rules*, SI/99-104.

Melissa Gillespie
Chief Judge
Provincial Court of British Columbia