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## NOTICE TO THE PROFESSION

**DATE:** February 1, 2017

**FROM:** The Honourable Justice R.S. Gee

**RE:** Judicial Pre-trials

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The Ontario Court of Justice is committed to ensuring the fair and timely resolution of criminal charges. Reducing trial continuations and collapse rates furthers this goal. To achieve this goal, judicial pre-trials will effectively address:

- resolution options (including withdrawals or guilty pleas);
- accurate trial estimates, and
- procedural and evidentiary issues that promote the proper use of trial time.

### 1. Judicial pre-trial expectations

Preparedness by all participants for a judicial pre-trial is a key expectation.

Each judicial pre-trial must be meaningful and move a case toward trial or resolution.

### 2. OCJ Criminal Rule 4.2 (Judicial pre-trial conference)

Crown and defence representatives must adhere to Rule 4.2, and in particular, must have the authority to make the decisions required under Rule 4.2(3).

### 3. Criteria for judicial pre-trials

The following cases should be scheduled for a judicial pre-trial:

- any case estimated to require 1 day or more;
- any case where the accused intends to be unrepresented, or represented by a non-licenced agent, at trial and is requesting a trial date;
- any case where defence anticipates the filing of a Charter Application

#### **4. Scheduling judicial pre-trials**

Absent exceptional circumstances, it is expected that the parties will have met to discuss the case in advance of the judicial pre-trial (see Rule 4.2(2)).

#### **5. Who should attend judicial pre-trials**

Only the Crown and licenced defence representatives, or the unrepresented accused person, should attend the pre-trial. Others may attend the pre-trial only with the approval of the pre-trial judge. Those attending the judicial pre-trial must have authority to make binding decisions regarding the conduct of the case.

#### **6. Materials required for a judicial pre-trial**

The parties are required to file a completed Judicial Pre-Trial Report as well as sufficient material, at least three days before a judicial pre-trial that provides the pre-trial judge an overview of the charge and the Crown's evidence, as well as any material that may assist in a resolution or sentencing decision.

At a minimum, the Crown should give the pre-trial judge the police synopsis, a copy of the Information, and a copy of any criminal record.

**Attachment:** Ontario Court of Justice, Criminal Rule 4.2, Pre-Trial Report

#### **Ontario Court of Justice, Criminal Rule 4.2**

##### **Judicial pre-trial conference**

4.2 (1) In this rule, "pre-trial" means a judicial pre-trial conference.

(2) Before attending the pre-trial, it is desirable for the parties to

- (a) meet in order to attempt to resolve issues; and
- (b) review the file.

(3) At the pre-trial, it is required that the parties have authority to make decisions on

- (a) disclosure;

- (b) applications, including Charter applications, that the parties will bring at trial;
- (c) the number of witnesses each party intends to call at the preliminary inquiry or at trial;
- (d) any admissions the parties are willing to make;
- (e) any legal issues that the parties anticipate may arise in the proceeding;
- (f) an estimate of the time needed to complete the proceeding; and
- (g) resolution of the matter, if appropriate.

### **Commentary**

Pre-trials are an important mechanism to provide the public with a speedy trial that focuses on the matters in issue. As such they are encouraged. A pre-trial held with Crown counsel should occur in advance of the judicial pre-trial, in order to focus agreements and admissions as well as the matters in issue. For the convenience of the parties, a pre-trial may be conducted by telephone with the consent of the pre-trial judge. A pre-trial on the record is particularly helpful for parties not represented by a licensee as defined in the *Law Society Act*. The court procedures can then be explained, the position of the Crown counsel on the issues can be related, and the issues set out in subrule (3) above can be canvassed.

### **Materials**

(4) At least three days before the pre-trial, the prosecutor shall give the pre-trial judge a copy of a synopsis of the allegations, unless a local practice direction provides otherwise.

(5) If the defence gives the pre-trial judge additional material, it shall do so at least three days before the pre-trial, if possible.

### **Communications technology**

(6) If the pre-trial judge agrees, the pre-trial may be held by telephone or by means of some other form of communications technology.

### **Judicial directions**

(7) After hearing from the parties during the pre-trial, the pre-trial judge may take one or more of the following steps:

- (a) confirm or amend the estimates of the time required to hear the proceeding;

(b) set timelines for the exchange of materials on applications to be heard, or for the completion of disclosure on matters to be set for trial or preliminary hearing;

(c) set times for the hearing of applications; and

(d) set a date for a further pre-trial, if required.

### **Commentary**

The effective management of the proceeding requires the cooperation of all parties. Failure to properly advise the court of relevant issues at the judicial pre-trial or to provide proper notice of the matters under this rule has the effect of inconveniencing the public, the parties and the Court. As such, it is necessary to set guidelines or timelines. Failure to comply with such guidelines or timelines for the exchange of material and submissions may result in the matter not proceeding on the court date.

### **Record of pre-trial agreements and admissions**

(8) At the completion of the pre-trial, any agreements or admissions may be signed or otherwise recorded, transcribed and attached to the information for the assistance of the trial judge.



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**The Honourable Justice R.S. Gee,  
Local Administrative Judge**