**Ontario Court of Justice**

**Kingston**



**PRACTICE DIRECTION**

In February 2010, the Ontario Court of Justice for the City of Kingston established a Justice on Target (JOT) Committee, which was comprised of key participants in the justice system. Its original goal was to address the ever increasing number of court appearances and lengthening delays to resolution of criminal matters, being experienced by all courts across the province.

This initiative proved so successful that representatives on the committee agreed to continue to meet on a regular basis, notwithstanding the completion of the JOT project by the Ministry of the Attorney General. In this secondary phase, members of the Court Users’ Committee (aka “JOT”) work on the development of innovative measures to enhance the effectiveness of all criminal processes within the Kingston Court.

This Practice Direction has been accomplished through a collaborative process that has been in place since the Committee’s inception. It will be important to have all of the processes contained in this document continually monitored to ensure their value and efficacy for the stakeholders and for the public. Any suggestions for future amendments will be brought to the Committee for its consideration.

# CONTACT INFORMATION

Court Administration Office

 PH: 613-548-6200

 Fax: 613-548-6819

Trial Co-ordinator

 PH: 613-548-6215

 Fax: 613-548-6817

Duty Counsel

 PH: 613-531-0504

 Fax: 613-531-3014

***Duty counsel is available, Monday through Friday, from 8:30 a.m. to 4:30 p.m.***

# FIRST APPEARANCE AND REMAND COURT

Youth Remands: Every other Tuesday @ 9:00 a.m.

Domestic Violence Remands: Weekly on Wednesday @ 9:00 a.m.

All other matters: Weekly on Thursday @ 9:00 a.m.

1. Police Services provide a ‘Notice to Accused’(Appendix A) to all persons charged, upon release from the police station, upon achieving bail, and/or after fingerprinting.
2. For all cases except domestic violence, the first appearance should be set no later than 6 weeks from the date of arrest. For cases involving allegations of domestic violence and impaired/over 80, the first appearance date shall be set no later than 2 weeks from the date of arrest.
3. Prior to the first appearance date, the police shall provide the Provincial Crown Attorney and/or the Federal Prosecutor with a First Appearance Package, containing initial disclosure.
4. At the first appearance of the accused, the Provincial Crown Attorney or the Federal Prosecutor will provide the First Appearance Package, together with the Crown Screening Form, outlining the Crown’s position to Defence. Unrepresented accused must attend the Crown’s office, with two pieces of identification, to receive the disclosure package.
5. Legal Aid Ontario processes Legal Aid applications on-site during Remand Courts.

Alternate Tuesdays (Youth) 8:30 a.m. – 11:30 a.m.

Wednesdays 8:30 a.m. – 11:30 a.m.

Thursdays 8:30 a.m. – 11:30 a.m.

1. In accordance with the *Criminal Code*, Defence counsel who have filed a Designation of Counsel, or have indicated that they are appearing as counsel of record, must bring a formal application to be removed from the record as outlined below:

a) **Applications to be removed from record:**

These applications can be dealt with in the Remand Court if ALL of the following conditions exist:

i) The Crown is consenting to the application;

ii) The trial date has not yet been set; and

iii) The accused is out of custody OR if the accused is in custody, and a production order is sought to require the attendance of the accused at the hearing, or there is another lawyer willing to go on the record for the accused.

If any of those conditions do not exist the matter is to be adjourned before a Judge of the Ontario Court of Justice.

If an application is within 60 days of the scheduled trial or preliminary hearing date, the application must go before the Local Administrative Justice or designate.

Any case scheduled for 2 or more days requires the application to be brought before the Local Administrative Justice, even if the Crown and Defence are consenting. Unless the accused person is present, the application must be in writing, served upon the accused pursuant to the *Rules of Practice*.

1. At the first appearance, confirmation should be provided to the Court that the following activities have taken place:
	1. Accused has received screened, redacted disclosure with initial Crown position or, if unrepresented, is aware of the need to attend the Crown’s office to receive these items;
	2. Accused has spoken to Duty Counsel/Private Counsel, if possible;
	3. Accused has made efforts to retain counsel, and
	4. Diversion has been initiated (if applicable).
2. In between court appearances, the following activities should take place and confirmation should be provided to the Court at any subsequent appearance that:
3. Accused has completed a Legal Aid application (if applicable).
4. Accused has retained Counsel.
5. Defence counsel and/or accused have reviewed initial disclosure.
6. Crown/Defence discussions have occurred.
7. Where required, judicial pre-trials have been scheduled and conducted.
8. Defence counsel has requested and received additional disclosure (if applicable).
9. Defence/accused and Crown are to justify on the record the reason for and the length of any adjournment request.
10. At the earliest opportunity, Counsel and/or accused should indicate their decision on how the case will progress (e.g. diversion, Crown election, guilty plea, setting a trial date, preliminary hearing, etc.).
11. Matters which are ready to proceed to trial or preliminary hearing must be adjourned into a Set Date Court, which are held on alternate Tuesdays at 9:00 a.m.
12. The justice of the peace will inquire if there are any unrepresented accused who wish to plead guilty. The justice of the peace will then direct the individual(s) to speak with Duty Counsel and the file will be traversed to the judge’s court.

# BAIL COURT

## Accused Appearing In Person

1. Bail Court for in-custody accused is held daily, commencing at 1:00 p.m. in courtroom #2, with the exception of Thursday when it is held in courtroom #3 at 1:00 p.m.
2. Duty counsel is available prior to the commencement of court to assist unrepresented accused
3. Defence counsel should meet with the bail Crown prior to the commencement of court to discuss the Crown’s position regarding release. Generally, the bail Crown is available to meet with counsel, in the office outside courtroom #2, by 12:30 Monday through Friday.
4. It is the expectation of the Court that new briefs be available to Crown counsel by noon, Monday through Friday.
5. Defence counsel or Duty counsel will indicate if the accused is seeking release and whether a plan is in place. If so, with the Crown’s consent, the justice of the peace may release the individual at that time. If more time is required to finalize the plan, the matter may be adjourned to another in-person Bail Court.
6. If the release is not consented to by the Crown, Defence counsel or Duty counsel will either:
	* Indicate that their client is pleading guilty, which can usually be accommodated on the same day;
	* Adjourn the matter to video remand, in order to formulate a plan for release;
	* select a date and time for a show cause hearing; or
	* waive the bail hearing.
7. Show cause bail hearings:
	* Show cause (contested) bail hearings are scheduled up to a maximum of four hearings per day, as time permits;
	* If a scheduled show cause bail hearing is not reached, it is rescheduled, with priority, to the following day, except with the consent of or at the request of the accused;
	* Show cause bail hearings anticipated to take more than three hours must be scheduled through the Trial Co-ordinator.
8. Where a surety is required, Defence Counsel or Duty Counsel should review the role and responsibilities of a surety to that person, including their right to obtain independent legal advice. The surety must complete and sign a document entitled: Affidavit of Justification By A Surety (see Appendix B) which is then filed with the Court.

## Accused Appearing By Video

1. As a rule, after the first appearance in Bail Court, in-custody accused will appear by way of video, unless they are resolving their matter or seeking release, either on consent or via show cause bail hearing.
2. Appearances in Bail Court by video link commence at 1:00 p.m. each day in courtroom #2, except Thursday, in the following order:
	* Adult video 1:00 p.m. (provincial custody)
	* Youth video 1:30 p.m.
	* Adult video 1:45 p.m.(federal custody)
3. All Defence counsel must attend video Remand Court in person to speak to their matters, or leave detailed instructions with Duty counsel or another agent. When an adjournment is requested **detailed reasons** must be provided to the Court in support of the request.
4. Counsel must request adequate time before the next video appearance to reasonably accomplish the objective for their adjournment.
5. A privacy booth is available in courtroom #2 for counsel to consult by telephone with their in-custody client.
6. A green sheet is required from the Trial Co-ordinator to schedule any matter before a judge, except for regular Guilty Plea Court.

## Weekend And Statutory Holiday (Wash) Court

1. Persons who have been brought into police custody during weekends or statutory holidays from any of the following court catchment areas\*: Pembroke, Perth, Cornwall, Brockville, Kingston, Napanee or Belleville, will appear by video from the police detachment in the Kingston courtroom #2 commencing @ 9:00 a.m. (\*Includes the following counties – Stormont, Dundas and Glengarry, Leeds and Grenville, Renfrew, Frontenac, Lennox and Addington, Hastings and Prince Edward.)
2. Duty counsel is available to assist unrepresented accused.
3. Defence counsel or Duty counsel will indicate if the accused is seeking release and whether a plan is in place. If so, and the Crown consents, the justice of the peace may release the individual at that time. If more time is required to finalize the plan, the matter will be adjourned to an in-person Bail Court in the local jurisdiction.
4. If the accused wishes to proceed with a show cause hearing at that time, it will be conducted using the video link.
5. Sureties: Arrangements should be confirmed with the Bail Court Duty counsel or Court Clerk as to how the surety will appear in the W.A.S.H. Bail Court: by video/telecommunication (with the consent of the accused) or in person at the Kingston court.

## Consent Bail Variations

1. Applications for a variation of an existing bail release order are available from the Court Administration Office.
2. The completed application, together with a copy of the existing bail order, (i.e. Recognizance or Undertaking), is submitted (in person or by fax) to the Crown’s office for consideration.
3. If approved and signed by the Crown, these documents are then provided to the Court Administration Office, along with the proposed date for the appearance before the justice of the peace.
4. The approved application must be filed with the Court Administration Office no later than noon of the day prior to the requested appointment at the Intake Court for the accused and sureties, if applicable, to sign the new bail document.
5. The variation of an existing bail release order is finalized in the Justice of the Peace Intake Court when the Defendant and any sureties sign the new Undertaking/Recognizance at the pre-arranged time during the following hours:
	* 10:00 a.m. to 11:30 a.m. and 1:30 p.m. to 3:00 p.m., Monday through Friday, or by special appointment.
6. Except by prior arrangement, appointments for signing the new bail order should not be scheduled the same day as the accused is to appear in Remand Court.
* Accused and sureties, if applicable, must sign in at the Court Administration Office prior to attending the Intake Court.
* The justice of the peace will deal with the accused on the record in the same manner as in Bail Court.
1. In exceptional circumstances, as the need arises, consent bail variations may be dealt with in open court.

# JUDICIAL PRE-TRIALS

1. There must be a Crown resolution meeting prior to attending the judicial pre-trial.
2. A judicial pre-trial is required for any matter which is expected to be scheduled for trial or preliminary hearing for one day or longer and must have occurred prior to being placed in the Set Date Court.
3. There are two types of pre-trials: resolution oriented and case management judicial pre-trials.
	* If Defence Counsel is attempting to resolve their matter with the assistance of the judge, the judicial pre-trial and potential guilty plea may be scheduled for the same date. It is desirable that Defence counsel have the accused attend in person on that date to avoid an unnecessary adjournment.
	* Case management judicial pre-trials are intended to resolve logistical matters relating to the upcoming hearing.
4. When attending the judicial pre-trial, Crown and Defence counsel or their agent should have knowledge of the file and should be in a position to have a meaningful discussion about the case including:
	* admissions/waivers
	* pre-trial motions
	* disclosure issues
	* number of witnesses required
	* any outstanding issues from the counsel pre-trial
	* possible resolution positions
	* estimate of time
5. Case management judicial pre-trials are held Monday and Friday mornings before 10:00 a.m. at 20 minute intervals.

1. As a rule, domestic violence judicial pre-trials are held on Wednesdays @ 9:30 a.m. and youth judicial pre-trials are held on Youth Court days on alternate Tuesdays at 9:30.
2. Pre-trials for self-represented accused will be held in court and on the record. It is preferable if Duty counsel can assist the accused in such situations.
3. In exceptional circumstances, where counsel has difficulty attending in person, the judicial pre-trial judge may allow the judicial pre-trial to be conducted by telephone.
4. Prior to the date scheduled for the judicial pre-trial, the Crown must provide a synopsis of the case to the Trial Co-ordinator for review by the pre-trial judge.
5. Counsel should contact the office of the Trial Co-ordinator to schedule any judicial pre-trial and obtain a green sheet for the judicial pre-trial, which will be filed in court.

# GUILTY PLEAS

1. A regular Guilty Plea Court is held weekly on Thursdays, commencing at 10:00 a.m.
2. Counsel are usually able to adjourn directly into this court from a Remand Court or Bail Court, without obtaining a green sheet.
3. Matters scheduled in this court should be limited to files which are less complex and can be dealt with reasonably quickly, preferably in less than 20 minutes (i.e. joint submissions etc.)
4. Guilty pleas for more complex files, or matters which require more court time can be arranged through the office of the Trial Co-ordinator and will require a green sheet.
5. Prior to traversing matters into the Guilty Plea Court from Remand Court, accused person’s counsel should be fully prepared to proceed (i.e. spoken to Duty Crown, had a counsel pre-trial etc.).
6. Judicial pre-trials are not available during the Thursday Guilty Plea Court.

# SET DATE COURT

1. Only matters ready to be scheduled for trial, trial continuation, preliminary hearing and motions/applications are dealt with in the bi-weekly Set Date Court held on Tuesdays, commencing at 9:00 a.m.
2. Scheduling priority is given to accused who are in custody on the charges before the court, matters involving vulnerable witnesses, trial continuations or time sensitive matters.
3. When an agent appears on behalf of Defence counsel, the agent should be fully informed and able to provide information regarding counsel availability for the following 12 months.
	* Persons in custody, whose matters are being heard in Set Date Court, will appear in a subsequent Bail Court to confirm the hearing date;
	* Self-represented accused must appear, in person, in Set Date Court.
4. Lengthy preliminary applications must be scheduled in Set Date Court at least 60 days in advance of the scheduled trial date.
5. Matters scheduled for hearing with or without counsel, or with self-represented accused, will be adjourned to a Judge’s Trial Readiness Court three months or more prior to the hearing date to confirm readiness to proceed.

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Judith C. Beaman (date)

Local Administrative Justice

Appendix A

**INFORMATION ABOUT APPEARING**

**IN THE ONTARIO COURT OF JUSTICE**

**279 WELLINGTON STREET, KINGSTON**

**WHAT MUST I DO BEFORE MY FIRST APPEARANCE?**

* **BEFORE** attending Court you should decide who will represent you. Persons who have lawyers

have their cases dealt with first in all courts.

* **Will you pay for your own lawyer?** If you plan to pay for your own lawyer you should contact

him/her before your first appearance so that he/she can be in court for you on that date. If your

lawyer cannot be there bring a letter from him/her indicating that they are representing you and

what they want done. If you need assistance finding a lawyer you might find the listings under

Lawyers in the Yellow pages helpful or you might call the Lawyers’ Referral Service at

1-800-268-8326. You could also find a lawyer to assist you through the Kingston Criminal

Defence Lawyers’ Association’s website at [www.kingstoncrimlaw.com](http://www.kingstoncrimlaw.com).

* **If you cannot afford your own lawyer**. You may qualify for Legal Aid. You can apply for a

Legal Aid lawyer at 279 Wellington Street on Mondays, Tuesdays or Wednesdays before 11:30

a.m. Duty Counsel are also available to help you on your court date if you are not represented.

The Duty Counsel Office is located outside courtroom 3.

**WHAT WILL HAPPEN ON MY FIRST APPEARANCE?**

* You must **ARRIVE EARLY** to do the things you need to do!
* **Check that your name is on the list** - Check to see that your name is on the list posted in the courtroom lobby (the Docket)
* **Speak to Duty Counsel/ Your lawyer**
* **Get your Disclosure** - Disclosure is the collection of documents which tells your lawyer what you are accused of doing. If you are represented by your own lawyer, he/she will get your disclosure from the Crown. If you are planning to represent yourself, you must bring two pieces of photo identification to court and you may obtain your disclosure from the Duty Crown. You may also pick up your disclosure with two pieces of identification from the Crown Attorney’s Office at 5 Court Street, 2nd Floor. If you are planning to plead guilty, it is important for you to obtain your disclosure so that the Duty Counsel will know what the Crown’s allegations are.
* **Don’t leave court before your name is called**! All names on the list will be called.

People who have lawyers usually have their names called first, next are the names of people who have talked to Duty Counsel and finally those people who are not represented. If you leave the courthouse before your name is called and no one tells the court what is to happen next, a Warrant for your arrest will likely be issued. If your name has not been called and the list appears to have been called, check with one of the courtroom staff.

**WHAT HAPPENS IF I WANT TO PLEAD GUILTY?**

* You should have reviewed your situation with either your own lawyer or Duty Counsel. You

should review the facts that the Crown is alleging constitute the facts of your case. Duty Counsel or your own lawyer will talk to the Crown to determine what the Crown is seeking as a penalty. Your case will be moved to a different courtroom and will be dealt with as quickly as possible.

**WHAT IF I CANNOT SPEAK ENGLISH WELL?**

* If you have any difficulties speaking or understanding English, the court can assist you by

arranging for an interpreter. **It is important that you let the Court know BEFORE your court**

**date of your needs.** Please call (613) 548-6200 and let them know your full name, the language you speak and the date you will be coming to court.

**WHAT SHOULD I BRING TO COURT?**

* You should come to court prepared with the things you will need:
* Bring any papers the Police gave to you relating to your charge
* Bring any papers you think might be important to your case (letters from doctors,

counsellors, employers, schools or other supportive documents)

* If you are going to apply for Legal Aid, bring **evidence of your current income and**

**expenses** (cheque stubs from Ontario Works Benefits, Ontario Disability Benefits,

 Employment Insurance, Workers Compensation or any Pension Plan), pay stubs or a letter

from your employer stating your income and deductions

**HOW AND WHERE DO I APPLY FOR LEGAL AID?**

* You should apply for Legal Aid BEFORE your first court date
* To qualify for Legal Aid you must meet certain financial and legal criteria
* You may get information about the criteria by calling Legal Aid Ontario at 1-800-668-8258 or online at [www.legalaid.on.ca](http://www.legalaid.on.ca)
* You can talk in person to a Legal Aid representative on Mondays, Tuesdays and Wednesdays before noon. The Legal Aid representative may be found at the Ontario Court of Justice, on the second floor of 279 Wellington Street just outside of courtroom 3.

Appendix B





