

Ontario Court of Justice Judicial Criminal Pre-trial Best Practices

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.

These best practices are intended to provide guidance to all judicial pre-trial participants about the application of OCJ Rule 4.2 (judicial pre-trial conference). These best practices are subject to the direction of the Regional Senior Judge.

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)

Judges should follow and enforce the judicial pre-trial procedures prescribed by [Rule 4.2](#). 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 4 or more hours;
- any case where the accused intends to be unrepresented, or represented by a non-licensed agent, at trial and is requesting a trial date;
- any case within a category of judicial pre-trial cases determined by the Regional Senior Judge, with particular attention to continuation and collapse rates; or
- any other case directed by the Regional Senior Judge.

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)).

Where judicial resources permit, pre-trials should be scheduled for full days (where volume allows) on fixed days at fixed times, with sufficient time allocated for each pre-trial to permit meaningful discussion. Each judicial pre-trial should be scheduled for a minimum of 20 minutes.

5. Who should attend judicial pre-trials

Only the Crown and licensed 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

Subject to other direction of the Regional Senior Judge, parties should be required to file sufficient material at least three days before a judicial pre-trial that provides the pre-trial judge with an overview of the charge and the Crown's evidence, and any material that may inform a resolution or sentencing decision, unless a local practice direction provides otherwise.

At a minimum, the Crown should give the pre-trial judge the police synopsis, unless a local practice direction provides otherwise. It is also desirable that the Crown provide a copy of the Information, and a copy of any criminal and local record.

7. Judicial pre-trial venue

Subject to availability, judicial pre-trials should be held in a designated room that is not a courtroom. Where a designated room is not available, judicial pre-trials should be held in a location that provides privacy, promotes open discussion, and conveys a sense of court decorum.

8. Judicial role

Judicial pre-trials require judges to apply effective management skills in order to direct productively the pre-trial, as well as effective leadership skills that permits strong moral suasion. Additionally, pre-trial judges should:

- actively listen to the parties;
- clearly and fairly communicate each parties' position;
- provide the parties with clear guidance about the strengths and weaknesses of each case, as well as what steps are required for trial; and
- create a meaningful record of discussion to assist in future case management hearings, and to keep parties accountable for decisions made during the pre-trial.

9. Judicial pre-trial follow-up

Subject to other direction of the Regional Senior Judge, the pre-trial judge should order a follow-up case-management event no later than 10 weeks before a trial date, such as:

- scheduling a confirmation hearing,
- a second judicial pre-trial, or
- requiring the parties to file a certificate of readiness.

10. On-going review of judicial pre-trials

On a regular basis, in consultation with the Regional Senior Judges, local judicial pre-trial practices and results will be examined with a view to continuous improvements of judicial pre-trial processes.

Attachment: Ontario Court of Justice, Criminal Rule 4.2

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.