CRIMINAL RULES OF THE ONTARIO COURT OF JUSTICE

RULE 1 — GENERAL

Fundamental objective

1.1 (1) The fundamental objective of these rules is to ensure that proceedings in the Ontario Court of Justice are dealt with justly and efficiently.

(2) Dealing with proceedings justly and efficiently includes

(*a*) dealing with the prosecution and the defence fairly;

(*b*) recognizing the rights of the accused;

(*c*) recognizing the interests of witnesses; and

(*d*) scheduling court time and deciding other matters in ways that take into account

(i) the gravity of the alleged offence,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the accused and for others affected, and

(iv) the requirements of other proceedings.

Duty of counsel, paralegals, agents and litigants

(3) In every proceeding, each counsel, paralegal, agent and litigant shall, while fulfilling all applicable professional obligations,

(*a*) act in accordance with the fundamental objective; and

(*b*) comply with

(i) these rules,

(ii) practice directions, and

(iii) orders made by the Court.

Duty of Court

(4) The Court shall take the fundamental objective into account when

(*a*) exercising any power under these rules; or

(*b*) applying or interpreting any rule or practice direction.

Commentary

Rule 1.1 reflects the crucial considerations that are to be borne in mind by the Court and the parties at each stage of the proceeding before the Ontario Court of Justice.

Scope of rules

1.2 These rules apply to all proceedings before the Court.

Commentary

These rules apply to criminal proceedings in the Ontario Court of Justice, including those presided over by judges and justices of the peace. Examples of where these rules apply are where a judge hears a trial of an offence under the *Criminal Code* or *Controlled Drugs and Substances Act*, or where a judge or justice of the peace presides in a set date court for criminal charges, or hears a peace bond application or firearms application. These rules do not apply to provincial offences proceedings, such as where a judge or justice of the peace presides at a trial under the *Highway Traffic Act*.

Definitions

1.3 In these rules,

"Charter"
« Charte »
"Charter" means the *Charter of Rights and Freedoms*;

"Code"
« Code »
"Code" means the *Criminal Code*;

"Court"
« tribunal »
"Court" means a judge of the Ontario Court of Justice, and includes a justice of the peace in a context where the Code allows a justice of the peace to act;

"proceeding"
« instance »
"proceeding" means a proceeding under the Code.

RULE 2 — APPLICATIONS

Application

2.1 (1) An application shall be commenced by serving an application in Form 1 on the opposing parties and any other affected parties and filing it with proof of service.

Contents of document

(2) The application in Form 1 shall include

(*a*) a concise statement of the subject of the application;

(*b*) a statement of the grounds to be argued; and

(*c*) a detailed statement of the factual basis for the application, specific to the individual proceeding.

Commentary

The only document that the party who is bringing an application before the Court under these rules must use is a Form 1 application. It is important that the application in Form 1 is filled out completely, as this will assist the Court and the other parties in understanding the relief sought, and the reasons in support of the application.

Transcripts

(3) If determination of the application is likely to require a transcript, the applicant shall serve and file it with the application in Form 1.

Commentary

Transcripts of court proceedings may be very important to the Court in deciding an application. For example, on an adjournment application the transcript may reveal that a previous adjournment was granted due to the absence of the Crown's witness, and on this occasion it is a defence witness who is unavailable. Transcripts are also important where a party seeks a stay of proceedings due to unreasonable delay under s.11 (b) of the Charter. Where a party requires a transcript, it is important that the procedures for ordering transcripts in the jurisdiction are followed, so that there is sufficient time for the authorized court transriptionist to produce the transcript for the hearing of the application.

Response

2.2 (1) A party responding to an application shall serve a response in Form 2 on the applicant and any other affected parties and file it with proof of service.

Contents of document

(2) The response in Form 2 shall include

(*a*) a concise statement of the party's reasons for responding to the application;

(*b*) a response to the applicant's grounds; and

(*c*) a detailed statement of the factual basis for the party's position, specific to the individual proceeding.

Commentary

The adversary system requires the participation of two informed parties. A timely and detailed response by the responding party is essential. Otherwise, the appearance of fairly administered justice may be impaired. The only document that the party who is responding to an application before the Court under these rules must use is a Form 2 response. It is important that the response in Form 2 is filed out completely, as this will assist the Court and the other parties in understanding the relief sought, and the reasons in support of the response. The responding party must also include proof of service on the applicant and any other affected parties in its material.

Additional material

2.3 (1) If the application in Form 1 complies with subrules 2.1(2) and (3), no additional material need be served and filed unless required by an order of a pre-trial or trial judge.

(2) Applicants and responding parties may serve and file any additional factual and legal material that they consider appropriate and helpful to assist the Court, including

(*a*) a brief statement of the legal argument to be made;

(*b*) one or more affidavits;

(*c*) case law to be relied upon, other than well-known precedents; and

(*d*) an agreed statement of facts.

Commentary

Additional materials may be filed that will assist the Court to decide the application. These might include a copy of the information or charge document, an agreed statement of facts, affidavits, and written argument and case law, where appropriate. It may also be necessary to have witnesses attend court (e.g., on an application for an adjournment of trial, a person who has firsthand knowledge of the reasons for the unavailability of the witness on the trial date). Where cases or legislation are filed, the relevant passage(s) should be indicated. There is no need to reproduce well known material, such as a section of the *Criminal Code*, or a well-known decision of the Supreme Court of Canada on unreasonable delay, such as *Askov*. Only materials that will be referred to by the parties in their submissions to the Court should be filed under this rule.

Time for pre-trial applications

2.4 (1) A pre-trial application shall be heard at least 60 days before trial, unless the Court orders otherwise.

(2) For the purposes of subrule (1), pre-trial applications include

(*a*) procedural applications, such as applications for adjournments or withdrawal of counsel of record;

(*b*) preparatory applications for matters that are necessary before proceeding to trial, such as disclosure, release of exhibits for testing or commission evidence;

(*c*) applications for severance and for particulars;

(*d*) applications for the appointment or removal of counsel; and

(*e*) applications for a stay of proceedings for unreasonable delay under paragraph 11(*b*) of the Charter.

(3) An application for a stay of proceedings for unreasonable delay under paragraph 11(*b*) of the Charter shall be brought before the assigned trial judge.

Time for trial applications

2.5 (1) A trial application shall be heard at the start of the trial or during the trial, unless the Court orders otherwise.

(2) For the purposes of subrule (1), trial applications include

(*a*) applications under the Charter, such as applications that

(i) challenge the constitutionality of legislation,

(ii) seek a stay of proceedings, except for unreasonable delay under paragraph 11(*b*) of the Charter, or

(iii) seek the exclusion of evidence;

(*b*) complex evidentiary applications, such as applications for the admission of

(i) similar act evidence,

(ii) evidence of a complainant’s prior sexual activity, or

(iii) hearsay evidence; and

(*c*) applications for access to records held by persons who are not parties to the proceeding.

Commentary

Trial applications can take many forms. For example, an application to exclude evidence at an impaired driving trial for a breach of the Charter is most commonly dealt with in a blended or combined Charter *voir dire* and trial. However, there are other trial motions which would benefit from being dealt with by the trial judge in advance of hearing the evidence at the trial. For example, an application for the admission of similar act evidence or for access to private records may be better heard in advance of the other evidence in the proceeding, as the outcome may require the parties to consider calling additional witnesses or affect a party's presentation of his or her case. Rule 2.5 is designed to balance the benefits of certainty as to how a complex issue should be addressed with flexibility to ensure that the fundamental objective set out in rule 1.1 is properly respected.

Time for other applications

2.6 An application to which neither rule 2.4 nor rule 2.5 applies, such as an application made by a witness or by the media, shall be heard at least 30 days before the trial, unless the Court orders otherwise.

Commentary

The applications described in rules 2.4, 2.5 and 2.6 relate to matters that must be dealt with in order to properly proceed with the trial, or will affect the complexity of the trial and the time needed to complete it. These applications involve issues that should be apparent to the applicant well in advance of the trial, where prior notice to the responding party and the Court would promote the fundamental objective set out in rule 1.1. In general, where the applicant knows before the trial begins that a *voir dire* or admissibility hearing will be needed to tender certain evidence, there should be compliance with rule 2.5, unless otherwise ordered by a pre-trial or trial judge. Such an application will not be necessary for the routine tendering of documents, such as those for the admissibility of breath testing or drug certificates.

Applications on consent

2.7 (1) Subject to subrule (2), an application in which all the parties are represented by counsel or by licensed paralegals may be dealt with on consent, without a hearing, if a party files a consent in Form 3.

(2) If the Court is of the opinion that the application requires a hearing, a hearing date shall be ordered.

(3) An application in which a party is not represented by counsel or by a licensed paralegal may be dealt with on consent if

(*a*) a party files a consent in Form 3;

(*b*) the self-represented party appears before the Court; and

(*c*) the Court is satisfied that the party understands the nature of the consent and the consequences of giving it.

Commentary

Parties are encouraged to consent to applications in a timely way in appropriate cases.

RULE 3 — SERVICE

Times for service

3.1 (1) An application in Form 1 shall be served and filed with proof of service at least 30 days before the date of the hearing of the application.

(2) A response in Form 2 shall be served and filed with proof of service at least 15 days before the date of the hearing of the application.

Exceptions

(3) Despite subrules (1) and (2), the time periods set out in those subrules may be shortened or lengthened

(*a*) by a local practice direction;

(*b*) by an order of the Court; or

(*c*) with the consent of the parties, except as described in rule 3.2.

Commentary

Timely notice of applications that are being brought under these rules is essential to the efficient management of trial proceedings. By way of example, if a stay of proceedings is granted for unreasonable delay under s.11 (b) of the Charter, the trial will not proceed, and the time scheduled for the trial will no longer be required. Determination of the application well in advance of the trial date permits the court time to be used for other matters. The general rule is that applications must be served and filed no less than 30 days before the date set for hearing the applications. Subrule 3.1 (3) provides exceptions to this, such as an order of the Court authorizing a different time period.

Application for adjournment or to be removed from record

3.2 On applications for adjournment and applications to be removed from the record, shortening the time periods set out in subrules 3.1(1) and (2) requires the approval of the Court, in addition to the consent of the parties.

Commentary

Rule 3.2 provides that in limited circumstances, and where all the parties agree, the time for service of an application for adjournment or where counsel of record applies to be removed from the record, may be reduced by the Court. It is recognized that there are occasions where unexpected developments take place, such as the illness of a witness shortly before the trial date, or a breakdown in the lawyer-client relationship, and it is not possible to give as much notice as the rules require. In such cases, the parties should not wait until the trial date to bring the application, but instead bring the application as soon as the matter comes to their attention, and

request that the Court permit the matter to be heard on short notice, with the consent of the other party.

Methods of service

3.3 (1) Service under these rules may be made in person, by fax or by email, and hard copies of the documents served shall be filed.

Electronic filing technology

(2) If electronic filing technology is available and a practice direction authorizes its use, the documents may be served electronically, filed electronically or both. When a document has been filed electronically, it is not necessary to file a hard copy, unless the Court orders otherwise.

RULE 4 — CASE MANAGEMENT

Hearing and trial management

4.1 When conducting a hearing or trial, the Court has the power to make any order or direction in relation to the conduct of the proceeding that would assist in ensuring that it is conducted in accordance with the fundamental objective set out in rule 1.1.

Commentary

In light of the Law Society's *Rules of Professional Conduct*, the *Principles of Civility for Advocates* and decisions from the Supreme Court of Canada and Ontario Court of Appeal, trial judges possess, and are expected to exercise, trial management powers in order to ensure that the proceedings are conducted reasonably, fairly and in accordance with the interests of justice. A trial judge will not be a mere observer who must sit by passively allowing counsel to conduct the proceedings in any manner they choose. For our justice system to operate effectively, trial judges must have the ability to control the course of proceedings before them.

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.

Focus hearing, preliminary inquiry

4.3 (1) A proceeding that is to have a preliminary inquiry shall have a hearing under section 536.4 of the Code if the preliminary inquiry judge so directs.

(2) The hearing shall be attended by

(*a*) counsel who will be conducting the preliminary inquiry, or another counsel designated by him or her with authority to make binding decisions; and

(*b*) the accused, if he or she is self-represented.

Materials

(3) The party who requested the preliminary inquiry shall serve the following materials on the opposing parties, together with the statement of issues and witnesses required by section 536.3 of the Code, and file them with proof of service, at least three days before the hearing:

(*a*) a list of witnesses whom the parties seek to have testify in person at the preliminary inquiry and, for each witness named in the list,

(i) a brief synopsis of the expected evidence,

(ii) an explanation of why in-person testimony is necessary, and

(iii) an estimate of the time required to examine or cross-examine the witness;

(*b*) a list of witnesses whom the parties propose to examine through a discovery process;

(*c*) a brief statement as to whether committal for trial is in issue, and on what basis; and

(*d*) a statement of admissions agreed upon between the parties.

Commentary

The purpose of a focus hearing is to ensure that the process is streamlined and witnesses with non-contentious evidence are not inconvenienced or that non-contentious evidence is not unnecessarily called. If the parties cannot agree on the witnesses to be called or the manner of receiving their testimony, then a hearing on the record can be scheduled under s. 540 before the preliminary inquiry judge and may result in the judge making binding orders for the conduct of the inquiry.

Absence of agreement

(4) At the conclusion of the hearing, if the parties do not agree as to the witnesses to be called at the preliminary inquiry, either party may schedule a hearing in accordance with subsections 540(7), (8) and (9) of the Code.

Discovery, preliminary inquiry

4.4 (1) At any time before committal for trial, the evidence of a witness may be taken by means of a discovery process if the parties and the preliminary inquiry judge agree.

Official record

(2) Evidence taken under subrule (1) forms part of the official record of the preliminary inquiry.

Exception, vulnerable witness

(3) Subrule (1) does not apply to a witness who is

(*a*) less than 18 years old; or

(*b*) the complainant in a proceeding involving sexual or physical violence.

Commentary

The discovery process is most useful for expert or non-controversial witnesses. The discovery will take place on the record at the courthouse in a courtroom or motions room or in a location agreed to by the parties. The witness will be sworn and the evidence will be taken in the absence of the judge.

RULE 5 — PRACTICE DIRECTIONS, FORMS AND NON-COMPLIANCE

Power to issue practice directions

5.1 (1) The Chief Justice or his or her delegate may issue practice directions that are consistent with these rules.

(2) A practice direction may apply to the whole of Ontario, to one or more of the seven regions of Ontario designated by the Ontario Court of Justice or to one or more local offices within those regions.

(3) A practice direction does not come into effect before it is posted on the Ontario Courts website (www.ontariocourts.on.ca).

Commentary

Practice directions can address the issues and court culture of our regions and local courts. In creating practice directions the judiciary, in their discretion, will consult with local members of the justice community.

Forms

5.2 (1) The following forms, which are available on the Internet through www.ontariocourtforms.on.ca, shall be used where applicable and with such variations as the circumstances require:

Form 1 (Application)
Form 2 (Response)
Form 3 (Consent)

(2) The Chief Justice or his or her delegate may issue additional forms and require their use.

(3) A requirement to use an additional form does not come into effect before

(*a*) the form and the requirement are posted on the Ontario Courts website (www.ontariocourts.on.ca); and

(*b*) the form is available on the Internet through www.ontariocourtforms.on.ca.

Power of Court to excuse non-compliance

5.3 The Court may excuse non-compliance with any rule at any time to the extent necessary to ensure that the fundamental objective set out in rule 1.1 is met.

Commentary

It is expected that the parties will be familiar with these rules of court and will comply with them. It is a professional obligation to do so. However, on rare occasions, there may be circumstances that prevent compliance. The Court in its

discretion may excuse non-compliance with the rules to the extent required to ensure a fair hearing. Consequences may result from non-compliance, including dismissal of the application without a hearing on the merits.

REPEAL AND COMING INTO FORCE

REPEAL

Repeal

6. The *Rules of the Ontario Court of Justice in Criminal Proceedings* are repealed.

COMING INTO FORCE

July 1, 2012

7. These rules come into force on July 1, 2012.