

COVID-19: Practice Direction Authorizing Alternate Form of Appearance where an Enhanced Designation of Counsel has been Filed (August 6, 2020)

The following Practice Direction is issued under Rules 4.5 and 5 of the Criminal Rules of the Ontario Court of Justice.

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1. Alternate Form of Appearance Where an Enhanced Designation of Counsel has been Filed on Behalf of an Accused Person

1. In response to the COVID-19 pandemic, and in order to limit the number of people who are required to attend a courthouse, the Court encourages accused persons to file designations of counsel, including Enhanced Designations of Counsel. Accused persons who are represented by counsel and who have filed an Enhanced Designation of Counsel, as described in Part 2 below, may have their matters adjourned, without the accused personally appearing, in accordance with the procedure set out in this Practice Direction and in accordance with Rule 4.5 of the Criminal Rules of the Ontario Court of Justice.
2. This Practice Direction applies to criminal proceedings, including proceedings under the *Youth Criminal Justice Act*.
3. Nothing in this Practice Direction prevents an accused person from appearing for a proceeding by designated counsel pursuant to a designation prepared in accordance with this Practice Direction or any other form of designation of counsel under s. 650.01 of the *Criminal Code*.
4. The timelines for delivering and filing notices or documents set out in this Practice Direction may be shortened or lengthened by direction of a judicial official.

2. Content of the Enhanced Designation of Counsel

5. In addition to fulfilling the requirements of ss. 650.01(1) and (2) of the *Criminal Code*, an Enhanced Designation of Counsel will include the following:
- i. The accused person will confirm and acknowledge that:
 - a. they have provided up-to-date contact information (address, telephone number and email (where applicable)) to counsel and they agree to remain in regular contact with counsel and promptly advise counsel of any change in contact information;
 - b. upon the filing of the Enhanced Designation of Counsel by their counsel, their matter will be addressed and adjourned by the Court, without them personally appearing; they waive their right to be present before the court when their case is addressed and adjourned; and they specifically agree the court will continue to have jurisdiction over them in such circumstances and that they are required to attend future court date(s) even though the matter was addressed and adjourned in their absence;
 - c. if the retainer is terminated for any reason, they will attend before the Court at the date and time provided by counsel to address their case, unless they have retained new counsel who has advised that they will appear on the accused person's behalf.
 - ii. Counsel will confirm and acknowledge that:
 - a. if the retainer is terminated for any reason during the adjournment period described in Part 4 of this Practice Direction, counsel will promptly notify the Crown and the Court. In addition, counsel will:
 - promptly arrange to have the matter brought forward to be addressed before the Court;
 - advise the accused that the accused needs to attend court on the next court date; and
 - attend on the next court date personally or by agent,
 - b. unless new counsel has confirmed in writing that they are retained and are prepared to attend on the next date and become counsel of record. (For clarity, these obligations may supplement, but do not reduce or replace, counsel's obligations any time they seek to withdraw as counsel, as set out in Rule 3.7 of the Rules of Professional Conduct and Rule 2.4 of the Criminal Rules of the Ontario Court of Justice.)
6. The Enhanced Designation of Counsel should also set out the accused person's next court appearance and the date that the accused person's case will be adjourned to, calculated in accordance with paragraph 16, below.
7. The Enhanced Designation of Counsel may authorize lawyers and law students who are members of designated counsel's law firm and any properly authorized agent of designated counsel to appear on the accused person's behalf.
8. Where the accused person has more than one Information before the court, the designation should specify the Information or Information(s) to which it applies by referring to the Information number(s), specific charge(s) or offence date(s).

9. A [sample Enhanced Designation of Counsel](#) that fulfills these requirements is available on the Ontario Court of Justice website. Counsel are welcome to use this sample or create their own version of the Enhanced Designation of Counsel that meets the requirements of this section.
10. Section 650.01 of the Criminal Code requires that the Enhanced Designation of Counsel be signed by the accused person and designated counsel. The accused person and designated counsel may use an electronic signature, as described in s. 5.4 of the [COVID-19 Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).

3. Limited Retainer Designation of Counsel

11. Designations of counsel, including Enhanced Designations of Counsel, may expressly limit the scope of the retainer and may specify counsel is only retained to represent the accused through the case management / intake phase, i.e. up to the setting of a trial or preliminary inquiry date. Where a designation is so limited, defence counsel does not need to apply to be removed from the court record at the end of the case management / intake phase. Unless defence counsel expressly agrees otherwise, any trial or preliminary inquiry scheduled where a limited designation of counsel is filed shall be deemed to be set on a “with or without counsel” basis.
12. Where counsel intends to set a trial or preliminary inquiry date on a “with or without counsel” basis, counsel must communicate this to the trial coordinator at the time the trial date is being selected.
13. Where a trial date is being set on a “with or without counsel” basis, the accused must attend court (either in person or by remote technology) when the trial or preliminary hearing date is formally set. The accused person will also be required to appear before court (preferably using remote technology) not less than ten (10) weeks prior to the trial or preliminary hearing date for a trial confirmation hearing.
14. The limited designation of counsel must include an acknowledgement by the accused person that they understand the limited retainer and they will be required to attend court as set out in the paragraph above. In addition, the designation counsel must clearly indicate in the document title that it is a limited retainer designation.

4. Adjournment of Approximately 12 Weeks Without the Accused Person Personally Attending

15. Where an Enhanced Designation of Counsel is filed, the accused person’s matter will be adjourned by the Court, to the date that is calculated in accordance with paragraph 16, without the accused or counsel personally appearing in court, in accordance with Rule 4.5 of the Criminal Rules of the Ontario Court of Justice.
16. The accused person’s matter will be adjourned to the date 12 weeks from the date of their next appearance, provided that date conforms with the courthouse schedule for criminal case management appearances. If an appearance 12 weeks away would not fall on the appropriate case management date, the matter will, instead, be adjourned to the appropriate case management date that is

approximately 12 weeks away from the date of their next appearance. No adjournment, however, may be for a period of more than three months.

17. The Enhanced Designation of Counsel must be delivered electronically (by email) to the Crown and [filed electronically \(by email\) with the Court](#) no later than three (3) business days before the next scheduled court date. The subject of the email should indicate the word “Designation”, the name of the accused person and the next court date, e.g. “DESIGNATION, John DOE, September 1, 2020”. Where the accused person is a young person, the subject of the email should indicate YCJA and the initials of the young person, rather than their full name, e.g. “DESIGNATION (YCJA), J.D., September 1, 2020”. The body of the email should contain the full name and date of birth of the accused person, details regarding the next court appearance (date, time, courtroom, courthouse) and defence counsel’s name, contact information and email address.
18. If the Crown takes the position the Enhanced Designation of Counsel does not comply with the requirements of this Practice Direction, the Crown should contact defence counsel and advise of their position in advance of the court appearance, wherever feasible.
19. The accused person’s matter will be addressed in court on the scheduled date, without the accused person or their counsel being present. If the Crown takes the position the Enhanced Designation of Counsel does not comply with the requirements of this Practice Direction, the Crown is to advise the Court at this appearance.
20. Where the Court is satisfied the Enhanced Designation of Counsel complies with the requirements of this Practice Direction, the case will be adjourned to the date identified on the designation without the accused personally appearing in court.
21. Where the Court is satisfied the Enhanced Designation of Counsel otherwise complies with the requirements of this Notice but there is a problem with the adjournment date identified on the designation (for example, the date falls on a statutory holiday or does not fall on the appropriate case management date), the case will be adjourned to an appropriate date without the accused personally appearing in court. The Crown will advise defence counsel of the revised adjournment date.
22. Where the Court is of the opinion the Enhanced Designation of Counsel may not comply with the requirements of this Notice, the matter will be adjourned for approximately one to two weeks with a bench warrant with discretion and the Crown will contact defence counsel and advise about the problem and the next court date so the issue can be addressed on or before the next court appearance. If the issue regarding the Enhanced Designation of Counsel is resolved before the next court appearance and a valid Enhanced Designation of Counsel is before the Court, the bench warrant with discretion will be rescinded or deemed executed at the next court appearance and the case will be adjourned to the date identified on the designation without the accused or counsel personally appearing in court).
23. The Court encourages defence counsel to file Enhanced Designations of Counsel even though some of the steps toward completion of the case management / intake phase, as described in Part 5 below, have already been completed. In such circumstances, counsel are expected to make best efforts to complete

the case management / intake phase at the earliest reasonable opportunity, rather than necessarily using the full adjournment period to do so.

24. If all steps toward completion of the case management / intake phase have been completed prior to the end of the adjournment period and the matter is proceeding to a trial or preliminary inquiry, counsel are encouraged to select a date through the Trial Coordinator's office, which may be formally set on the next court appearance. Alternatively, counsel are encouraged to bring the matter forward so that it can be resolved or otherwise addressed before the Court, using the procedure set out in Part 6 of this notice.

5. Obligation of Crown and Defence Counsel to Move the Case Forward During Adjournment Period

25. During the period of adjournment under Part 4 of this Notice and any extension thereof pursuant to Part 7 of this Notice, the Crown and defence counsel shall make best efforts to move the case forward, within the time period of the adjournment and/or extension, to completion of the case management / intake phase, including the following:

- i. The Crown will
 - a. promptly screen the case and provide meaningful initial disclosure to defence counsel,
 - b. respond promptly to disclosure requests;
- ii. Defence counsel will
 - a. make diligent efforts to obtain and review disclosure
 - b. promptly advise the Crown's office of any additional outstanding disclosure and be diligent in following up on any outstanding disclosure;
- iii. Both the Crown and defence counsel will work cooperatively to complete the following at the earliest reasonable opportunity:
 - a. schedule and conduct a Crown pre-trial meeting;
 - b. where required or otherwise appropriate, schedule and conduct a judicial pre-trial;
 - c. where the matter is resolving, schedule and proceed with the resolution including, where appropriate, bringing the matter forward in accordance with Part 6; and
 - d. where the matter is proceeding to trial or preliminary inquiry, select a trial or preliminary inquiry date through the Trial Coordinator's office, which may be formally set at the accused person's next court date.

26. If issues arise that are expected to interfere with the steps described above being completed within the adjournment period, counsel will arrange to have the matter brought before the Court by either scheduling a judicial pre-trial or bringing the matter forward in accordance with Part 6 of this Practice Direction to address these issues.

6. Bringing a Matter Forward

27. Any matter adjourned in accordance with Part 4 of this Practice Direction may be brought forward at any time to be addressed before the Court.
28. The request to bring a matter forward must be in writing. Where counsel agree on a bring forward date, the request is to be filed electronically with the Court by either defence counsel or the Crown at least 3 business days before the date. Where counsel are unable to agree on a bring forward date, the request must be brought on at least 7 days written notice to the other party and filed electronically with the Court.

7. Extension of Adjournment

29. The adjournment period set out in Part 4 may be extended once for an additional four weeks upon the joint request of the Crown and defence counsel.
30. Provided the written request for an extension of adjournment is filed with the court at least three (3) days before the next scheduled court date, the accused person's matter will be adjourned to a date four (4) weeks from their scheduled court date by the presiding judicial official without the accused or counsel personally appearing in court. If an appearance 4 weeks away would not fall on the appropriate case management date, the matter will, instead, be adjourned to the appropriate case management date that is approximately 4 weeks away from the date of their scheduled court date and Crown counsel will advise defence counsel of the revised date.

8. Court Record

31. The Enhanced Designation of Counsel and any adjournment extension request will be filed with the court and form part of the court record.

9. Cases Involving Co-Accused

32. Defence counsel may file an Enhanced Designation of Counsel in a case involving co-accused, even though a co-accused has not yet retained counsel or the co-accused's counsel has not filed an enhanced designation. Upon filing of the enhanced designation, the accused person's matter will be adjourned in accordance with Part 4 of this Practice Direction, unless otherwise directed by a judicial official.
33. The Court expects that Crown and defence counsel will work cooperatively with one another, and with any unrepresented accused person, to move the matter forward, such as coordinating scheduling judicial pre-trials and selecting trial or preliminary inquiry dates. This is particularly important if one or more co-accused is in custody.

10. Paralegals Appearing as Authorized Agents Under s. 800 of the *Criminal Code*

34. The procedure outlined above may be used by paralegals representing accused persons in connection with summary conviction *Criminal Code* offences (including hybrid offences in which the Crown has elected to proceed summarily) on which they are authorized to appear as agent under ss. 800 and

802.1(c) of the *Criminal Code*. The paralegal may file an “enhanced appointment of authorized agent for summary conviction matters”, by preparing and adapting the Enhanced Designation of Counsel described in Part 2 of this Practice Direction.

35. Where the Crown has indicated on a charge screening form that the Crown will be electing to proceed summarily, the enhanced appointment of authorized agent may be filed with the Court in anticipation of the Crown electing to proceed summarily at the next scheduled appearance. If the Crown elects to proceed by summary conviction when the accused person’s matter is addressed in court on the scheduled date, the matter will be adjourned, without the accused person or their counsel being present, in accordance with the procedure set out in Part 4 of this Practice Direction. If the Crown does not elect to proceed by summary conviction on the next court date, the matter will be adjourned for approximately two weeks with a bench warrant with discretion and the Crown will contact the paralegal to advise so that the issue can be addressed on the next court date.

Dated at Toronto this 6th day of August 2020.

Chief Justice Lise Maisonneuve