

Notice to the Profession and the Public re Criminal Case Management Appearances and Setting Trial and Preliminary Inquiry Dates (Published July 2, 2020)

This Notice provides a further update regarding court operations in the Ontario Court of Justice, relating to (i) criminal case management appearances; and (ii) setting criminal trial and preliminary inquiry dates.

The Ministry of the Attorney General, which is responsible for courts administration and courthouse facilities, has established an incremental plan to prepare courthouses and courtrooms to facilitate the return to full court operations across Ontario. The Ministry has announced the first phase of the plan (Phase One) will be implemented Monday July 6, 2020, in a limited number of courthouses and courtrooms. The Court has previously announced that criminal trials and preliminary inquiries would resume in those courthouses on July 6, 2020: see [Notice to the Profession and the Public re: Resumption of Criminal Trials and Preliminary Hearings in the Ontario Court of Justice as of July 6, 2020](#).

As part of the return to operations plan, the Ministry is implementing health and safety measures in each courthouse.

In Phase One and by July 6, 2020, the Court has been advised that site assessments of 93 OCJ courtrooms will be complete, and that all necessary health and safety precautions, based on public health expert advice, will be implemented for the protection of all court users, including judicial officers, lawyers, litigants, witnesses, staff and members of the public. The Ministry will not re-open a Phase One site on July 6, 2020 if it concludes that the health and safety of courthouse participants cannot be adequately protected on this date.

More information about the precautionary health and safety measures at courthouses implemented by the Ministry is available on the following website: [COVID-19: Reopening courthouses..](#)

Do not attend the courthouse if you are experiencing signs or symptoms of COVID-19 or have been advised by a public health official, a physician or the [Ontario Ministry of Health](#) website to self-isolate. Please contact your lawyer or, if you do not have a lawyer, please contact the courthouse by [email](#) or [telephone](#) to seek direction.

On July 6, 2020, the Court will resume setting criminal trial and preliminary inquiry dates, including rescheduling trials and preliminary inquiries that were adjourned due to the COVID-19 pandemic, using the procedure set out in part 2 of this Notice. In addition, to continue limiting the number of people who must attend within courthouses and courtrooms, the adjournment of criminal case management appearances, which began on March 16, 2020 due to the COVID-19 pandemic, is being extended to July 31, 2020.

The content of this notice will be incorporated into the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#) prior to July 6, 2020.

Court operations will continue to expand with additional courthouses and courtrooms added as the Ministry continues to implement its plan across the province, with a targeted completion date of November 1, 2020.

Please continue to check the [Ontario Court of Justice website](#) for updates. The Court will provide additional information about the scheduling and conduct of all court proceedings, including the Court's ongoing work to make more services available using remote technology. The Court will continue working actively with all justice partners to implement a fair and orderly return to operations. As we do so, the health and safety of all court users remains our paramount concern.

1. Criminal Case Management Appearances

a. Definition of “Case Management Appearances”

In this Notice, “case management appearances” include all criminal court appearances by accused persons who are out of custody, other than the following

- i. trials or preliminary inquiries at court locations where the court resumed hearing trials and preliminary inquiries on July 6, 2020 (see [Notice to the Profession and the Public re: Resumption of Criminal Trials and Preliminary Hearings in the Ontario Court of Justice as of July 6, 2020](#))
- ii. out of custody matters brought forward or scheduled for a resolution under s. 4.3b of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#); and
- iii. urgent out of custody matters brought forward at the request of a party under s. 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).

Case management appearances include first appearances, matters scheduled “to be spoken to” or to “set a date”, but do not include matters in which a new trial or preliminary inquiry date has been scheduled using the procedure set out in part 2 of this Notice, which will be addressed using the procedure set out in section 2c.

b. Extension of Automatic Adjournment of Criminal Case Management Court Appearances Involving Accused Persons not in Custody

If you have a case management criminal court appearance in the Ontario Court of Justice on or before July 31, 2020, **do not attend court**. The court will adjourn your matter without you being present, using a court order called a “[bench warrant with discretion](#)”, which will require you to attend court on the new date.

Although the Ontario Court of Justice has resumed hearing trials and preliminary inquiries at a limited number of courthouses, the number of people who may be present in the courthouse and in the courtroom remains restricted to maintain safe physical distancing. For this reason, in-person attendances for criminal court case management appearances can not currently be accommodated.

The Court is actively working to adopt technology and establish a procedure that will allow accused persons and/ or counsel to attend criminal case management appearances using remote technology. Further details about this will be provided shortly.

In the meantime, the automatic adjournment of criminal court appearances for accused persons who are not in custody, described in section 4.3a of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#) will be extended to July 31, 2020.

All case management criminal court appearances up to July 31, 2020 involving accused persons who are not in custody will be adjourned, in the absence of the accused person, to a date approximately 10 weeks from the original date. To find out what date your matter is being adjourned to, see the [list of adjournment dates](#). **These dates are subject to change.** Please check back on this website before your next court date to confirm the date.

If you are unsure about the date of your next court appearance, whether you are required to attend court on that date, or whether you should be attending in person or by remote technology, please contact your lawyer. If you do not have a lawyer, please contact Legal Aid or contact the courthouse by [email](#) or [telephone](#).

Note: This automatic adjournment does not apply to trial dates or preliminary inquiry dates scheduled to take place on or after July 6, 2020 at courthouses where the Court has resumed hearing trials and preliminary inquiries. If you have a trial or preliminary inquiry scheduled to be heard in July, 2020, please refer to the [Notice to the Profession and the Public re: Resumption of Criminal Trials and Preliminary Hearings in the Ontario Court of Justice as of July 6, 2020](#) for more information.

The automatic adjournment does not apply to matters in which a new trial or preliminary inquiry date has been scheduled using the procedure set out in part 2 of this Notice. Those matters will be addressed in court using the procedure set out in section 2c

c. Steps to Move Cases Forward Without a Court Appearance

Although criminal case management court appearances are being adjourned in the absence of the accused due to the pandemic, the Court expects that the Crown, accused persons and defence counsel will take steps to move cases forward in ways that do not require a court appearance.

The Crown is expected to actively screen and monitor cases and to move cases forward by doing the following

- screening files and providing initial disclosure, either directly to the accused person (if self-represented) or to defence counsel;
- promptly responding to disclosure requests, whether from the accused person (if self-represented) or to defence counsel;
- scheduling and conducting Crown pre-trials;

- after a Crown pre-trial meeting has been held, scheduling and conducting a [judicial pre-trial](#) where required or otherwise appropriate
- where the case is resolving without a trial, arranging to have the matter brought before the court for the resolution to be implemented under ss. 4.3b and 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).
- where the matter is proceeding to a trial or preliminary inquiry, scheduling the trial / preliminary inquiry using the process set out in [part 2](#) of this Notice; and
- identifying cases that should be brought before the Court to be addressed before their next court date and making the appropriate arrangements to do so under s. 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).

Defence counsel are expected to move their client's case forward by doing one or more of the following:

- contacting the [Crown Attorney's office](#) to obtain disclosure;
- scheduling and conducting a Crown pre-trial meeting; and
- after a Crown pre-trial meeting has been held, scheduling and conducting a [judicial pre-trial](#) where required or otherwise appropriate
- where the case is resolving without a trial, arranging to have the matter brought before the court for the resolution to be implemented under ss. 4.3b and 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).
- where the matter is proceeding to a trial or preliminary inquiry, scheduling the trial / preliminary inquiry using the process set out in [part 2](#) of this Notice; and
- identifying cases that should be brought before the Court to be addressed before their next court date and making the appropriate arrangements to do so under s. 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).

Accused persons who do not have a lawyer should also be moving their case forward by doing one or more of the following:

- contacting and retaining counsel to represent them in connection with your case;
- contacting [Legal Aid Ontario](#) to receive advice and assistance in connection with your case; and
- contacting the [Crown Attorney's office](#) to make arrangements to receive disclosure (information about your criminal case that the Crown must prepare and provide) . To find out how to do this, please refer to this document prepared by the Crown Attorney's Office: [Notice to Accused Person: Obtaining Information about Your Case](#).

For more information about criminal proceedings, please see the [Guide for Accused Persons in Criminal Trials](#) on the Ontario Court of Justice website.

If you have a lawyer and have questions about your case, please contact your lawyer. If you do not have a lawyer, and you have questions about your case or if you are unsure about what you should be doing about

your case, you can contact [Legal Aid Ontario](#) to receive advice and assistance in connection with your case.

d. Bringing Cases Forward to Address Them Before the Court

Matters that have been adjourned can be brought forward to implement a resolution or to address an urgent issue, using the procedure set out in sections 4.3b and 4.3c of the [COVID-19: Notice to Counsel and the Public re: Criminal Matters in the Ontario Court of Justice](#).

2. Setting Criminal Trial and Preliminary Inquiry Dates

The Court will resume setting criminal trial and preliminary inquiry dates on July 6, 2020, using the procedure set out in this Notice.

a. Priority Order and Timeline for Scheduling Trials and Preliminary Inquiries

Because of the large number of cases that were adjourned and need to be rescheduled due to COVID-19, the need to prioritize within the Court's caseload, and in order to have a fair and orderly scheduling process, the Court has established a priority order and timeline for the setting of trial and preliminary inquiry dates.

The scheduling of trials and preliminary inquiries will be done in the following priority order:

1. In-custody continuations: Trial and preliminary inquiry continuations involving accused persons who are currently in custody that were scheduled to proceed between March 16, 2020 and July 3, 2020 but were adjourned due to the COVID-19 pandemic. Within this category, priority will be based on the previously scheduled continuation date.
2. In-custody hearings adjourned due to COVID-19: Trials and preliminary inquiries involving accused persons who are currently in custody that were scheduled to begin between March 16, 2020 and July 3, 2020 but were adjourned due to the COVID-19 pandemic. Within this category, priority will be based on the previously scheduled trial / preliminary inquiry date.
3. New in-custody hearings: Other trials and preliminary inquiries involving accused persons who are currently in custody, including hearings adjourned on or after July 6 2020 and hearings that were not previously adjourned and are seeking to set a first trial / preliminary inquiry date.
4. Out-of-custody continuations: Trials and preliminary inquiry continuations involving accused persons who are currently not in custody that were scheduled to proceed between March 16, 2020 and July 3, 2020 but were adjourned due to the COVID-19 pandemic. Within this category, priority will be based on the previously scheduled continuation date.
5. Out-of-custody hearings adjourned due to COVID-19: Trials and preliminary inquiries involving accused persons who are currently not in custody that were scheduled to begin sometime after March 16, 2020 but were adjourned due to the COVID-19 pandemic. Within this category, priority will be based on the previously scheduled trial / preliminary inquiry date.
6. New out-of-custody hearings: Other trials and preliminary inquiries involving accused persons who are currently not in custody, such as hearings that were not previously adjourned but are now seeking to set

a first trial / preliminary inquiry date.

The scheduling of trials and preliminary inquiries will be done in accordance with the following timeline:

	<u>Category</u>	<u>Scheduling will begin no later than</u>
1.	In-custody continuations	July 6, 2020
2.	In-custody hearings adjourned due to COVID-19	July 7, 2020
	Hearings adjourned March 16 – April 9	July 7, 2020
	Hearings adjourned April 14 – May 8	July 9, 2020
	Hearings adjourned May 11 – June 5	July 14, 2020
	Hearings adjourned June 8 – July 3	July 16, 2020
3.	New in-custody hearings and in-custody hearings adjourned on or after July 6	July 21, 2020
4.	Out-of-custody continuations	August 5, 2020
5.	Out-of-custody hearings adjourned due to COVID-19	To be announced
6.	New out-of-custody hearings	To be announced

These timelines apply province-wide and are needed to accommodate larger centres with a large number of hearings that need to be rescheduled. At the direction of the Regional Senior Judge, court locations that have completed scheduling within one category of cases may begin scheduling cases in the next category of cases before the date set out in this timeline.

Counsel are encouraged to prepare and submit [Trial / Preliminary Inquiry Scheduling Form](#) (described below) before the dates set out in these timelines in the event that scheduling in a court location begins earlier than the date set out in the timeline.

These timelines are also subject to change. Further details regarding the timeline and procedure for scheduling trials and preliminary inquiries involving accused persons who are out of custody, including procedures for self-represented accused persons, will be published shortly.

b. Procedure for Selecting Trial and Preliminary Dates

The setting of all trial and preliminary inquiry dates will be done remotely using a combination of an online form (the [Trial / Preliminary Inquiry Scheduling Form](#)) and a trial scheduling conference with the Trial Coordinator's office.

Completion and submission of the online form

Defence counsel will complete the [Trial / Preliminary Inquiry Scheduling Form](#) and submit it to the Trial Coordinator's office electronically, following the instructions on the form.

Defence counsel must also send a copy of the Scheduling Form to the appropriate [Crown's office by email](#).

If the matter is being prosecuted by an agent of the Public Prosecution Service of Canada, counsel should also copy the agent, if known.

Trial scheduling conferences

After the Scheduling Form is received by the Trial Coordinator's office, a trial scheduling conference will be held with the Crown, defence counsel and the Trial Coordinator attending.

The trial scheduling conference will be conducted remotely by video conference or teleconference. The Court is working with the Ministry of the Attorney General to secure licences to allow the trial scheduling conferences to be conducted by videoconference using Zoom. In the meantime, trial scheduling conferences will be conducted by audioconference. Counsel will receive audioconference details after the Trial Scheduling Form is submitted to the Trial Coordinator's office.

The purpose of the scheduling conference is to review and confirm the content of the Trial Scheduling Form and to canvass available dates so that the Trial Coordinator can assign a trial / preliminary inquiry date.

Counsel attending the trial scheduling conference must be fully briefed on all matters that may affect the scheduling of the hearing, including

- the time estimate for the trial
- the available dates for counsel and witnesses (including police witnesses)
- whether all or any portion of the hearing is proposed to be conducted by videoconference or audioconference; and
- any other matters that may affect the scheduling of the trial (interpreters, child friendly room, pre-trial and trial applications, etc.)

The Trial Coordinator will record the selected trial / preliminary inquiry date, and all other dates canvassed, on the Trial Scheduling Form. The Trial Coordinator will record a trial confirmation date on the Trial Scheduling Form, which will be assigned in accordance with local protocols and procedures.

The Trial Coordinator will email the completed form to the Crown, defence counsel and the court clerk.

Further details regarding the timeline and procedure for scheduling trials and preliminary inquiries involving accused persons who are out of custody, including procedures for self-represented accused persons, will be published shortly.

Self-represented accused persons

Self-represented accused persons who are in custody will schedule their trial or preliminary inquiry dates in accordance with a procedure determined by a judicial official presiding. The procedure will be canvassed at

the accused person's next court appearance.

Details regarding the procedure for accused persons who are out of custody to schedule their trial or preliminary inquiry dates will be published shortly.

c. Setting Trial Dates and Preliminary Inquiry Dates at the Next Court Appearance

The trial / preliminary inquiry date will be formally set at the accused person's next court appearance based on the date set out in the [Trial / Preliminary Inquiry Scheduling Form](#), unless counsel objects and the presiding judicial, after hearing the submissions of counsel, directs otherwise.

The Trial / Preliminary Inquiry Scheduling Form will be attached to the Information and will form part of the court record, unless the presiding judicial official directs otherwise.

Where the accused person is self-represented, or the trial or preliminary inquiry is being set on a "with or without counsel" basis, the accused person must attend the court appearance at which the trial date is set.

Unless otherwise directed by a judicial official, all court appearances to set a trial date will be done using remote technology.

Setting the Trial Date in the Absence of the Accused Person where Represented by Counsel

Where the accused person is out of custody and the accused person is represented by counsel who is retained to conduct the trial or preliminary inquiry, the trial / preliminary inquiry date can be set at the accused person's next court appearance without the accused person personally attending. The trial will be set, and the matter will be adjourned based on the [Trial / Preliminary Inquiry Scheduling Form](#) and the matter adjourned to the trial confirmation date without the accused person personally attending, in accordance with rule 4.5 of the [Criminal Rules of the Ontario Court of Justice](#).

If defence counsel chooses to do so, they may attend at the next court appearance to set the trial date before the presiding judicial official. If either counsel or party intends to speak to the trial date on the next court date, counsel must notify the other party / counsel in advance so that both counsel are present and prepared to address the matter.