

## **COVID-19: Out of Court Adjournment of Matters where an Enhanced Designation of Counsel has been Filed - Pilot Project in Ottawa (Issued January 28, 2021)**

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

### **Preamble**

In response to the COVID-19 pandemic, and in order to limit the number of people who are required to attend court, the Court issued a [Practice Direction Authorizing Alternate Form of Appearance where an Enhanced Designation of Counsel has been Filed](#) on August 6, 2020. The Enhanced Designation benefits the Court and all parties by reducing the need for multiple case management appearances which result in lengthy dockets in case management (set date) courts.

To further streamline appearances and reduce the burden on case management courts, the Court has established a pilot project in Ottawa. In the pilot, accused persons whose counsel have filed an Enhanced Designation of Counsel may have their matters adjourned to the next court date without the matter being addressed in court.

### **Interpretation and Application**

1. This Practice Direction applies to proceedings in Ottawa as of Monday February 1, 2021.
2. In this Practice Direction, "scheduled court date" means the court date that a matter is scheduled to next be addressed in criminal case management court when an Enhanced Designation is filed.
3. The provisions of the [Practice Direction Authorizing Alternate Form of Appearance where an Enhanced Designation of Counsel has been Filed](#) on August 6, 2020 (the "General Enhanced Designation Practice Direction") continue to apply, except to the extent that they are inconsistent with the provisions set out in this Practice Direction.
4. More particularly, all provisions of the General Enhanced Practice Direction apply, except that some of the procedures set out in section 4, "Adjournment of Approximately 12 Weeks Without the Accused Person Personally Attending" have been modified to allow the accused person's matter to be adjourned outside of court, rather than having the matter addressed in court in the accused person's absence.

**Filing the Enhanced Designation of Counsel at least 5 business days before the accused's scheduled court date**

5. 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 **5 business days** before the scheduled court date.
6. The Ottawa courthouse has set up a special email account to receive Enhanced Designations of Counsel during the pilot. Counsel should send an email to the Court, with the appropriate Crown's office and Ottawa Police copied on the email:  
Court: [ottawa.criminal@ontario.ca](mailto:ottawa.criminal@ontario.ca)  
Provincial Crown [VirtualCrownOttawa@ontario.ca](mailto:VirtualCrownOttawa@ontario.ca)  
Federal Crown (Public Prosecution Service of Canada): [NCRServiceofDocuments@ppsc-sppc.gc.ca](mailto:NCRServiceofDocuments@ppsc-sppc.gc.ca)  
Ottawa Police: [court@ottawapolice.ca](mailto:court@ottawapolice.ca)  
Because court staff will use "reply all" to notify the Crown and defence counsel about the status of the Enhanced Designation, it is important that defence counsel copy the correct Crown's office on the email.
7. The subject of the email should indicate the word "Enhanced Designation", the name of the accused person and the next court date, e.g. "ENHANCED 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. "ENHANCED 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.
8. The content of the Enhanced Designation of Counsel must conform with the requirements set out in section 2 of the General Enhanced Designation Practice Direction.
9. Where the accused person has more than one Information before the court, the designation must specify the Information or Information(s) to which it applies by referring to the Information number(s). Where the Information number is not available to defence counsel, this can be done by specifying the charge(s) and offence date(s).

## **Review of the Enhanced Designation by a judicial official**

10. Court staff will deliver the Enhanced Designation of Counsel to a judicial official for them to review. This review will take place outside of court and in advance of the accused person's scheduled court date.
  - (i) Adjournment of the accused person's matter outside of court
11. Where the judicial official is satisfied the Enhanced Designation of Counsel complies with the requirements of the General Enhanced Designation Practice Direction, the judicial official will adjourn the case to the adjournment date identified on the Designation.
12. Where the judicial official is satisfied the Enhanced Designation of Counsel otherwise complies with the requirements of the General Enhanced Designation Practice Direction, but there is a problem with the adjournment date identified on the Designation (for example, the proposed adjournment date falls on a statutory holiday or does not fall on the appropriate case management date), the judicial official will adjourn the case to the proper adjournment date.

13. The adjournment of the accused person's matter under paragraph 11 or 12 will take place outside of court, in the absence of the accused person, and in advance of the accused person's next scheduled date. As a result of the adjournment, the accused person's matter will be removed from the court docket for the scheduled court date and will not be addressed in court on that date. In accordance with Rule 4.5 of the Criminal Rules of the Ontario Court of Justice, the filing of the Enhanced Designation is deemed to be a court appearance.
14. The adjournment date will be determined in accordance with paragraph 16 of the General Enhanced Designation Practice Direction:

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.

  - (ii) Matters that remain on the docket due to a problem with the Enhanced Designation
15. Where the judicial official is of the opinion the Enhanced Designation of Counsel does not comply with the requirements of the General Enhanced Designation Practice Direction, the matter will not be adjourned. The matter will remain on the docket and will be addressed on the scheduled court date.
16. If a judicial official has directed that a matter remain on the docket to be addressed in court on the scheduled court date, and defence counsel is not present to address the matter, the presiding judicial official may adjourn the matter for approximately one to two weeks with a bench warrant with discretion and the Crown will contact defence counsel and advise about the next court date, in accordance with paragraph 22 of the General Enhanced Designation Practice Direction.

## **Notification of Counsel**

17. Court staff will email defence counsel and the Crown to advise whether or not the accused person's matter has been adjourned, as directed by the judicial official, including any reason(s) provided by the judicial official. Notification will be given at least one day before the scheduled court date, provided that the Enhanced Designation of Counsel was filed at least five (5) business days in advance of that date. Notification will be given by "replying all" to the original email sent by defence counsel attaching the Designation.
18. If defence counsel fails to file the Enhanced Designation of Counsel at least 5 business days before the scheduled court date, counsel should not assume that the Designation will be reviewed outside of court. Unless notified by court staff that the Enhanced Designation has been reviewed and the matter has been adjourned, counsel should assume that the accused person's matter will be addressed in court on the scheduled court date.

## **Obligation of Crown and Defence Counsel to Move the Case Forward During Adjournment Period**

19. Crown and defence counsel have all of the obligations to move the matter forward during the adjournment period that are set out in the General Enhanced Designation Practice Direction, including the following:
- making best efforts to move the case forward, within the time period of the adjournment and/or any extension, to completion of the case management / intake phase;
  - where an Enhanced Designation of Counsel is filed following completion of some steps of the intake phase, making 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
  - bringing the matter forward before the Court if the matter can be resolved or otherwise addressed before the end of the adjournment period, or if an issue arises that is expected to interfere with the intake phase being completed within the adjournment period.

## **Exceptional Cases in which there is a Problem with the Enhanced Designation**

20. The Court anticipates that the Crown and defence counsel will comply with the procedures that apply to Enhanced Designations of Counsel. However, there may be rare occasions in which an Enhanced Designation of Counsel does not comply with the requirements the General Enhanced Designation Practice Direction, or there is a problem with the proposed adjournment date set out on the Designation. On those rare occasions where a problem arises with an Enhanced Designation, the following procedure should be followed.
21. The Crown should review Enhanced Designations of Counsel promptly upon receipt. Where the Crown takes the position the Enhanced Designation of Counsel does not comply with the requirements of the General Enhanced Designation Practice Direction, or that there is a problem with the proposed adjournment date set out on the Designation, the Crown should immediately notify the Court and defence counsel by email.
22. The Crown's email identifying the problem with the Enhanced Designation of Counsel will form part of the court record. The Crown's email, together with the Information and Enhanced Designation of Counsel will be delivered to a judicial official for review.
23. If the judicial official receives the Crown's email before conducting their review of the Designation, the judicial official will consider the Crown's email in determining whether the matter should be adjourned or should remain on the docket to be addressed on the scheduled court date, in accordance with the provisions set out above.
24. If the judicial official receives the Crown's email after the accused person's matter has been adjourned in accordance with paragraphs 21 and 22 of this Practice Direction, the judicial official may take whatever action they determine to be appropriate in the circumstances, including the following:

- directing that the adjournment date be revised to the proper adjournment date, in accordance with paragraph 12;
- directing that the matter be re-listed on the docket to be addressed on the scheduled court date, where there is sufficient time to notify counsel before the date;
- directing that the matter be brought forward from the adjournment date to be addressed on another court date, either one or two weeks following the scheduled court date; or
- directing that the matter remain adjourned as previously directed, subject to one of the parties bringing the matter forward to an earlier date.

25. Court staff will advise defence counsel and the Crown, by email, of the judicial official's direction.