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## **Notice to the Profession and the Public regarding the Scheduling of Criminal Trials and Preliminary Inquiries (July 27, 2021)**

This notice sets out the procedure for setting trial and preliminary inquiry dates using a combination of an online form and a trial scheduling conference with the Trial Coordinator's office.

The procedure was first established in July 2020 in response to the COVID-19 pandemic, as described in the following two notices, which are available in the archives section of the Ontario Court of Justice website:

- [Notice to the Profession and the Public re Criminal Case Management Appearances and Setting Trial and Preliminary Inquiry Dates](#) (Published July 2, 2020)
- [Notice to the Profession and the Public: Update regarding the Scheduling of Criminal Trials and Preliminary Inquiries](#) (August 12, 2020)

### **1) Procedure for Selecting Trial and Preliminary Dates**

Subject to the paragraph immediately below, 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.

Note: At the direction of the Regional Senior Judge, an alternative procedure for setting trial dates may be adopted locally. Any such local procedure will serve as a supplementary alternative to the procedure set out in this notice. Counsel may continue using the procedure set out in this notice to set a trial or preliminary inquiry in any court location across the province, even where an alternative procedure has been introduced locally.

#### **a) 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.

## **b) 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. A properly-instructed agent may attend the trial scheduling conference on behalf of the Crown or defence counsel.

The trial scheduling conference will be conducted remotely by video conference or teleconference. 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.

### **c) Election re Mode of Trial**

If an accused person has not made their election regarding mode of trial, the defence is encouraged to have the accused make their election by written submission in accordance with s. 536.2 of the Criminal Code. A written Notice of Election prepared by the Ministry of the Attorney General's Court Services Division that may be completed and filed with the Court is available on the Ontario Court of Justice website. The Notice of Election may be signed electronically and may be filed with the Court by attaching it when the Trial / Preliminary Inquiry Scheduling Form is submitted.

If an accused person is entitled to an election but has not yet made their election, the accused person will be required to be present by remote appearance at their next court date to be put to their election, unless otherwise directed by a judicial official.

### **d) Self-represented accused persons**

Note that, in accordance with the Court's [Judicial Criminal Pre-trial Best Practices](#), a judicial pre-trial is generally required before a self-represented accused person can schedule a trial date. The procedure for setting the trial date may be discussed at the judicial pre-trial.

Where a judicial pre-trial has been held but the procedure for setting the trial date was not discussed, for example, where a previously-scheduled trial was adjourned due to the pandemic, the procedure for setting the trial date will be determined by the judicial official presiding at the accused person's next court appearance. The Crown or self-represented accused person should indicate at the court

appearance that they wish to set a trial or preliminary inquiry date, so that the procedure for setting a date may be canvassed on the record.

Accused persons who are out of custody who are able to do so may complete and submit the online [Trial / Preliminary Inquiry Scheduling Form](#) to start the trial-setting process. If an accused person is unable to complete the online [Trial / Preliminary Inquiry Scheduling Form](#), the Crown may be asked to complete and submit the form.

## **2) 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.

### **a) 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.

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