



PROVINCIAL COURT
OF BRITISH COLUMBIA

PRE-TRIAL CONFERENCE CHECKLIST - SEXUAL OFFENCES
(PUBLIC)
SEPTEMBER 3, 2024

PREAMBLE

1. Both the Crown and defence counsel have an obligation to consider making reasonable admissions, streamlining the evidence, and anticipating issues that need to be resolved. This requires the parties to discuss the issues before the PTC and come prepared to work towards these goals with the PTC Judge. *R. v. Jordan, 2016 SCC 27 at para 138*
2. Both the Crown and defence counsel have an obligation to consider making reasonable admissions, streamlining the evidence, and anticipating issues that need to be resolved in advance. A failure to participate in the advancement of these goals will attract judicial scrutiny. *R v Jordan, 2016 SCC 27 at para 138.*
3. Trial judges must actively suggest ways to improve efficiency in the conduct of legitimate applications, such as, where appropriate, proceeding on a documentary record and submissions alone. This responsibility is shared with counsel.
4. Counsel must be proactive in scheduling applications in a timely way. In *R. v. JJ, 2022 SCC 28 (JJ)*, the Supreme Court pointed out that if mid-trial applications become routine, this will result in frequent adjournments, significant delays, scheduling difficulties and potential unfairness for the accused. Mid-trial applications could also harm complainants and discourage the reporting and prosecution of sexual offences. It is not enough to think about pre-trial applications. They must be prepared, served and filed promptly to be heard and decided well before the trial.
5. Positions taken at a PTC may constitute an undertaking to the court. If any party changes the position taken at the PTC, they must provide written notice to the other party of the change in position as soon as they determine their position has changed, in addition to any notice required by the *Criminal Code*.
6. Where the change will involve an additional application and require more court time than determined at the PTC, counsel making the change shall arrange another one. Failure to notify the other side and the court of any application not indicated at the PTC may be a factor the trial judge considers in determining whether it should proceed.

JORDAN TIMELINE

What is the anticipated Jordan deadline: _____

PUBLICATION BANS OR IN-CAMERA– MUST BE MADE ON THE RECORD

1. Is a publication ban necessary for the pre-trial?
 - If the pre-trial conference is on the record, banning the publication of the contents of the PTC might be necessary.
 - Although there is no provision in the *Code* for such an order, the court can rely on its inherent jurisdiction to protect the integrity of the process. Such an order might look like this:
Pursuant to the court's jurisdiction to manage and protect the integrity of the court process (the identity of the accused), the information given, or the representations made and the reasons given by this Court must not be published, broadcast, or transmitted in any way. This ban applies indefinitely unless otherwise ordered.
 2. Are publication bans in place to prohibit publication of the identity of the complainant or witness? If not, does the Crown intend to make any applications?
 - Typically, mandatory publication bans are applied for and made when the information is sworn. A judge can impose a ban if the PTC is on the record.
 - If a mandatory order has already been made for a person under 18, the prosecutor must inform the complainant and any witness who is subject to the order of its existence, whether they wish to be subject to the order, and about their right to apply to revoke or amend the order. (s 486.4(3.2))
 3. If the Crown makes an application for a mandatory order, the judge must ask the Crown:
 - If they have spoken to the victim or witness and determined if they wish to be the subject of the order; and
 - If not, the judge must remind them about this duty and to report back to the court as soon as feasible after the order has been made.
 4. Forms of Publication Orders
 - Any offence
 - Complainant is under 18 mandatory (s486.4(2.2))
 - Complaint is over 18 discretionary (s486.5(1))
 - Witness is under 18 discretionary (s486.5(1))
 - Sex, extortion, charging criminal interest rate, and distribution of intimate images offences
 - Complainant is under 18 mandatory (s486.4(2))
 - Complainant is over 18 discretionary (s486.4(1))
 - Witness is under 18 mandatory (s 486.4(2))
 - Witness over 18 discretionary (s 486.4(1))
- Youth Criminal Justice Act*

- The ban under the *Act* only applies to the name of the accused, so if the Crown seeks to ban the identity of the complainant or witness from publication, they must make an application under the *Code*.

LANGUAGE RIGHTS, PLEA, ELECTION – MUST BE MADE ON THE RECORD

1. Has the accused been informed of their language rights?
2. Has a not-guilty plea been entered? (If PTC is on the record, ask counsel/accused to enter the plea).
3. If the Crown is proceeding by indictment, has there been an election? If not, what will the election be? (If PTC is on the record, ask counsel/accused to enter their election).
4. Ensure the record of proceeding reflects all of the above.
5. If it is a preliminary inquiry, sections 276, 278, and any *Charter* applications can only be heard by the trial judge. See preliminary Inquiry issues at the end of this guide.

MAIN ISSUES

The Court recognizes that the Defence is not required to state its defence, core issues in dispute, nor its intention to present a defence at this stage. However, the Court invites the Defence to do so in every case where it would not prejudice the rights of the accused to ensure an efficient trial.

<input type="checkbox"/> Credibility/reliability	
<input type="checkbox"/> Consent/capacity (complainant’s intoxication)/age	
<input type="checkbox"/> Honest but mistaken belief in communicated consent/reasonable steps	
<input type="checkbox"/> Position of trust or authority	
<input type="checkbox"/> Accident or innocent association	
<input type="checkbox"/> Identity or alibi (If alibi, when will name(s) and contact information be disclosed. If disclosed, when will the Crown investigate it)	
<input type="checkbox"/> Parties	
<input type="checkbox"/> Intoxication of accused	
<input type="checkbox"/> NCR	
<input type="checkbox"/> Other	

DISCLOSURE

1. Is disclosure complete?
2. If not, what remains outstanding? When it will be provided: _____
3. If the Crown is not prepared to disclose, will there be a disclosure application? See Third Party Records Application section below.

4. If Crown undertakes to disclose, is an interim date required to check on the status of the undertaking?
5. If it is a child pornography charge, will there be an admission as to the number and nature of images? If not, how will Crown lead the evidence of images?
6. Will there be any explicit image/video evidence adduced at the trial? If so, have the parties considered how this will be done, and will there be an application to exclude the public?
7. Remind the parties to ensure that everyone has the same copies of police statements with the same page and line numbers and that all photograph booklets must be numbered.

If a plea has not been entered because of outstanding disclosure. The parties should address what remains outstanding and the reasons why a plea cannot occur. An accused is not entitled to hold out for every last piece of disclosure before fixing a date unless the disclosure is pivotal in understanding the nature of the case and the proof and materials impact on advising the client about the nature of the plea, mode of trial, etc.

INTERPRETER AND SPECIAL EQUIPMENT

1. Is an interpreter required for the accused or any witness?
 - Accused or witness: _____
 - Language: _____
 - Simultaneous, consecutive, or hybrid interpretation required: _____
 - Number of interpreters required: _____
2. Is any special equipment required? Parties must fill out an equipment request form.
 - Soft-spoken Witness Kit (Array microphone with powered speakers)
 - Assistive Listening Kit (Wireless infrared transmitters and receivers)
 - 4-headset Interpreter Kit
3. If the PTC is off-the-record, direct the parties to advise the court registry as soon as possible if interpreters are required.

WITNESS(ES)

TOTAL TIME IN DIRECT AND CROSS

of Crown Witness(es) ____ Estimated Total Time: _____

of Defence Witness(es) ____ Estimated Total Time: _____

PROMISE TO TELL THE TRUTH FOR WITNESS UNDER 18

Will there be a challenge to the witness' capacity to testify? (16.1 (3) CEA) Time estimate: _____

TESTIMONIAL ACCOMMODATIONS

1. Will there be an application for testimonial accommodation? If so, what type? Will the application be opposed?
 - Screen with or without Video (some locations have screens with a camera behind them so counsel can see the witness on a monitor, but the complainant cannot see the accused or counsel)
 - CCTV from a video room in the courthouse
 - CCTV from a video room offsite
 - Support Person (Who is it - ensure they are not a potential witness – seating arrangement)
 - Support Dog (seating arrangement and ensure there no allergies with any court participants)
 - Out-of-town witnesses – remote testimony?
 - Other type: _____
2. Will the application be consented to? If so, the judge can make the order on the record. If not, when will the application be filed for scheduling: _____
3. Accommodation for the complainant might also be necessary for a section 276 or 278 application. For example the complainant might want to attend remotely. If so, the parties must ensure appropriate steps are taken to ensure the hearing remains *in-camera*.
4. If the PTC is on the record and there is an application for remote testimony, have the parties considered:
 - Location
 - If there is a support person, the seating arrangements
 - Are there any issues with documents or video evidence that need to be addressed for remote witness (715 applications)
 - Remind parties that they are responsible for ensuring that either the remote witness or system facilitator is trained with the equipment or MS Teams
 - Remind parties that they are responsible for advance testing
 - Remind the parties that the witness will need copies of all the exhibits at the remote site, and discuss how this should be done (sealed envelope, etc.)
5. The Crown must be reminded that the Courtroom Equipment Request Form must be filled out for unique equipment needs a minimum of 14 days before the hearing and that they are responsible for testing the equipment in advance.
 - One-way Screen
 - Testimonial Accommodation Kit (3 screens, GoPro type camera and monitor)
 - Portable Witness Kit (IP-based) (Requires data/network connection)
 - Portable Witness Kit (CCTV) (Does not require data/network connection)
 - Document viewer

If a witness will be testifying by video, ensure counsel familiarizes themselves with the requirements set out in *R v JLK*, 2023 BCCA 87:

- 1) testify in a private room free from distractions and be able to adjust the camera to show no one else is present, to the satisfaction of the court;
- 2) position the camera so that their hands are always visible;
- 3) have a cellphone to access exhibits. They will be instructed to keep the cell phone in a location in the room where it is always visible on camera and not to access it unless specifically requested by counsel or the court;
- 4) be directed not to touch the keyboard, mouse, or trackpad or change the camera angle on their electronic device without permission of the court;
- 5) confirm under oath or affirmation that they do not have access to any documents or materials related to this case during their testimony, other than exhibits, accessible on their cellphone and that Crown or defence requests they access;
- 6) make reasonable efforts to position themselves so that their back is to the only door to the private room in which they are testifying so that the court can see if anyone else enters the room while they are testifying;
- 7) make reasonable efforts to place a mirror behind them so that the court can see the computer monitor they are viewing to ensure they are not using a split screen.

SECTION 715 VIDEO EVIDENCE (UNDER 18); HEARSAY; KGB APPLICATIONS

1. Will the application be opposed? If so, what will the objection be?
2. Which witnesses are required?
3. Estimate of time required?
4. Will the application occur pretrial or during the trial?
5. If the statement is admissible, does it require editing? Can parties agree on the redactions?
6. Ensure there is a transcript available for all the parties.
7. Are there any issues with the witness being able to view the video if the witness appears remotely by video?

EXPERT WITNESSES

The Court recognizes that the Defence is not required to state its intention to adduce expert evidence at this stage. However, the Court invites the Defence to do so in every case where it would not prejudice the rights of the accused to ensure an efficient trial.

1. Providing an opinion on?
2. Has expert notice been provided? If not, will it be served at least 30 days before trial?(657.3(3))
3. Has a copy of the report been provided?
4. Will the report be admitted? If not, on what grounds is it being opposed?
5. Are qualifications admitted? If not, on what grounds?
6. Can the parties avoid calling the expert by forwarding a list of questions to the expert to supplement their report?
7. Will there be an application for testimonial accommodation for the expert? (Remote? Timing of testimony?)

MEDICAL EVIDENCE

1. Is it expert evidence or just observations? If so, ensure the expert evidence issues above are reviewed.
2. Will the evidence be admitted? If so, is it legible, and does it require any interpretation?

SECTION 276 – Other Sexual Activity of the Complainant

Caution: If discussing details – must go *in-camera* and also ensure that a publication ban is imposed

1. Does the section apply to the charge(s)?
2. Will the accused's counsel be adducing (referring to) any sexual activity engaged in by the complainant outside of the subject matter of the charge?
3. Is an application for direction being made to determine if the activity is other sexual activity requiring a section 276 application?
4. Will the section 276 application occur before the trial?
 - The application should occur before the trial, but rare exceptions exist as noted by the SCC in *JJ*.
5. When will the Notice be provided?

- Notice must be given to the Crown and the Court. The off-the-record PTC judge should direct that notice be provided before the first on-the-record PTC (The *Code* states seven days' notice before the application and not the trial).
 - Is the notice sufficient? (Does it include detailed particulars of a specific instance of sexual activity and its relevance to the trial? The evidentiary foundation can sometimes be in the form of a third-party affidavit for stage one but will usually need to be from the accused at stage two).
6. What form of notice will the complainant and their counsel receive?
- The Crown must, unless the court says otherwise, provide the complainant with a general description of the proposed evidence and its relevance as asserted by the accused in the application, but not the application until the court determines whether the application is proceeding to stage 2.
 - Will the accused waive this and allow the Crown to provide the complainant with a copy of the application?
7. The application itself cannot be waived but can proceed on an agreed statement of fact and/or on a concession by the Crown and Defence that the court will likely be satisfied that that the threshold for stage one will be met.

Stage One – Application to have hearing

8. Will Stage One be before the trial judge?
- The application must be before the trial judge.
 - The purpose of stage one is to determine whether the application should proceed to the second stage.
9. Will stage one of the hearing be oral, written, or both and how long?
- The form of hearing is at the discretion of the judge.
 - Does the Crown agree that the stage one threshold will be met? If so, the PTC judge should schedule both stages of the hearing on the same day and ensure the complainant and their counsel receive notice of the application.
 - Time estimate: _____
10. Can the complainant and their counsel attend stage one of the hearing?
- The complainant and their counsel are not entitled to attend stage one unless the defence consents. The hearings proceed more efficiently when they are allowed to attend stage one because it avoids any repetition of the evidence or submissions.
 - Alternatively, can the complainant's counsel attend, in the absence of the complainant, stage one?
11. Do parties envision stages one and two occurring on the same day?
- In most cases, they will occur in two stages, with time in between for judicial deliberation.

- Factors to consider include:
 - The complexity of stage one, what kind of time will the judge require to consider the arguments?
 - Does the Crown concede that the judge will likely be satisfied that it will proceed to stage two?
 - Does the complainant plan to participate in the application if it proceeds to stage 2?
 - What type of notice will the complainant and their counsel receive, and will the parties be consenting to them being present for stage one?

12. What is the time estimate for stage one hearing? _____ and how many days in between for the decision _____

13. This stage of the hearing cannot be waived and the judge must provide reasons.

Stage Two – Admissibility Hearing

1. How much notice will the complainant and counsel receive before the stage two hearing?
2. Ideally, counsel for the complainant should be involved as early as possible in discussing the time required for the stage two hearing and fixing of dates.
3. Will the defence oppose the complainant receiving a copy of the application?
4. Will the defence oppose the complainant attending stage two of the application?
5. If the defence opposes the complainant receiving a copy of the application or attending stage 2, a hearing should be scheduled before the trial judge for an application to get the court's permission to do so.
 - The complainant and their counsel should be given notice of this application.
 - Time estimate: _____
6. How long will the stage two hearing take?
 - The application can proceed with an agreed statement of fact and with written submissions if all the parties agree. See SCC in *JJ*.
 - Will the Crown or the complainant be opposing the application?
 - Will the Crown seek to cross-examine the accused on the affidavit? The complainant is not entitled to cross-examine the accused.
 - Will all parties be making submissions, including the complainant's counsel?
 - Time estimate for hearing: _____ and time for judge to deliberate _____?
7. Will the complainant require any accommodation for the hearing? (For instance, appearing by video or audio – if so, can the necessary guardrails be put in place to ensure the application remains *in-camera*).

8. Will there be an application for the judge to publish reasons if the application is not successful? If the application is successful, there is no publication ban on the reasons.

9. This stage of the application cannot be waived and the judge must provide reasons.

SEABOYER APPLICATION – Crown Application to Adduce Other Sexual Activity

Caution: If discussing details – must go In-Camera and also ensure that a publication ban is imposed

1. If the Crown intends to adduce evidence of other sexual activity of the complainant, they must make a common law application called a *Seaboyer* application.
2. The application operates like a 276 application, but the complainant does not have standing. The application should occur *in-camera* and be the subject of a publication ban unless the judge determines the evidence is admissible then reasons will not be the subject of a ban.
3. Neither the Crown nor the Defence can waive the application and the judge must provide reasons.

Section 278.92 – Private Records in the Possession of the Accused

RIPOTA

Caution: If discussing details – must go *in-camera* and also ensure that a publication ban is imposed

1. Does the section apply?
 - If private records have been disclosed to the defence by the Crown, do the parties believe an application is necessary?
2. The complainant can waive the protection of this section:
 - The waiver must be informed and unequivocal.
3. The application can proceed with an agreed statement of fact and with written submissions if all the parties agree. See SCC in *JJ*.
4. The application procedure is the same as set out above under section 276.

SECTION 278.2 – THIRD-PARTY RECORDS APPLICATION

Caution: If discussing details – must go *in-camera* and also ensure that a publication ban is imposed

1. Does the section apply?
2. Will there be an application for direction to determine if the information constitutes a record?
3. Do the parties know whether the complainant or witness is waiving the protection of the section?

4. The application can proceed on an agreed statement of fact, and oral or written submissions if all the parties agree.
5. Will the Crown and other parties contest Stage 1 or 2? Although they cannot waive it, they can concede that the court will likely be satisfied that either stage will be met.
6. All the parties to whom the record relates must be given 60 days' notice before the application, not the trial. The application should be heard well in advance of the trial because:
 - If the judge orders production for review, the amount of material might be voluminous, and the judge will require time to review the documents and deliberate.
 - After reviewing the records, the judge might discover others who have a privacy interest and are entitled to notice.
 - Multiple counsel might appear, which will result in significant scheduling issues.
 - If the records are ordered produced for the accused, the accused will have to make a RIPOTA application if they intend to adduce the evidence at the trial or a section 276 application if the records contain evidence of other sexual activity.
7. Who is entitled to notice?
 - Anyone to whom the records relate must be given notice by the accused.
 - Will there be an argument over who is entitled to notice?
 - Are there people who have a privacy interest in the records that are unknown to the accused? If so, will that information be shared with the accused, or steps taken to provide them with notice of the application, or is the intention to redact the information that relates to them from the record?
8. The record holder must be subpoenaed to bring the records in the proper form
 - Will the complainant or witness be seeking access to the records in advance of the application?
9. Will there be affidavit evidence, and if so, will the Crown seek to cross-examine the accused? Only the Crown is entitled to cross-examine the accused.
10. Do all the parties envision making representation concerning both stages at a single hearing?
 - Typically, the parties make stage one and two submissions simultaneously. Do the parties see any reason why there should be two separate hearings?
11. How long will the application take? Time for the hearing and time for deliberations _____
12. Do the parties anticipate the need for a section 276 or section 278.92 application if the records are disclosed? If so should time be set aside for that application too?

SELF-REPRESENTED ACCUSED

SELF-REPRESENTED ACCUSED AND CROSS-EXAMINATION

1. Will there be an application to appoint counsel for cross-examination of the complainant or witness?
 - Mandatory upon application for witnesses under 18 (s 486.3(1)).
 - Mandatory upon application for the complainant if the accused is charged with a section 264, 271, 272 or 274 offence(s 486.3(2)).
 - Discretionary upon application for all other offences (s 486.3(3)).
2. If the application is being contested, how much time will be required: _____

STATEMENT ISSUES

1. Does the Crown intend to tender any statements made by the accused? If so does the Crown intend to adduce it as part of its case, or use it for cross-examination of the accused if they testify?
2. Are there any *Charter* challenges under sections 10(a) or 10(b)? If so, what are the issues? Are there any issues concerning the voluntariness of the statement(s)?
3. Has notice been provided concerning the *Charter* challenges. If not, what is the notice deadline:

4. How long of a hearing is required? Can the application proceed on an agreed statement of fact, or is evidence required? If not, how many witnesses, how long will it take to view the statement, and will there be defence evidence?
5. Can the voluntariness and *Charter voir dire*s be heard together?
6. Time estimate for *voir dire*: _____ (How many witnesses required? Is every officer who had contact with the accused necessary?)
7. When should the *voir dire* be scheduled? Ideally, it should be heard before the trial. When it is heard during the trial it can be problematic because the judge will required time to deliberate, and the parties might also have to argue section 24(2). Timing of the *voir dire*: _____
8. The section 24(2) application can be scheduled if the Crown foresees arguing it if a breach is found. Time estimate for the section 24(2) application: _____
9. Will the ruling decide the case?

UNREASONABLE TRIAL DELAY

1. Is there a trial delay issue pursuant to section 11(b) of the *Charter*?
 - The presumptive ceiling is 18 months from the date the information is sworn for matters heard in Provincial Court. However, delay applications can be made even when the delay is below the ceiling. Stays below the ceiling are rare.
 - The Crown bears the onus to demonstrate the delay was not unreasonable if the delay exceeds the ceiling, and the defence bears the onus if the application is made below the ceiling.
2. Can the PTC judge direct any scheduling steps to minimize further delay issues?
3. Has notice been provided, and if not, what is the notice deadline: _____
4. What evidence is required?
 - Will transcripts of appearances be ordered?
 - Can the parties reach an agreed statement of fact concerning the timeline, etc and proceed just on submissions?
 - Will any witnesses be required?
 - Will the accused be filing an affidavit? Will the Crown seek to cross-examine the accused?
5. When will the hearing occur, before or after the trial? Generally, it is preferred that the hearing occur before the trial, but the hearing should not delay the trial.
6. How long will the hearing take?
 - Time estimate: _____
7. If it will be before the trial, how much time does the judge require to deliberate?

SEARCH AND SEIZURE ISSUES

1. Does the Crown intend to rely on evidence seized pursuant to a warrant or production order (for example search of residence, cell phone or computer)?
2. Is the defence seeking exclusion of evidence based on an alleged section 8 breach? Has *Charter* notice been provided? If not, what is the deadline for notice: _____
3. Did a judge issue the warrant or production order? If so, that judge should be disqualified from hearing this matter. Who is the judge: _____
4. Has the Information to Obtain and authorization (ITO) been disclosed? If not, is it sealed? If sealed, when will there be an application to unseal it, will it be disclosed, and when: _____

5. If there is a warrant or production order, is counsel seeking redaction of confidential information in the affidavit?
6. Does the Crown concede the breach? If so, only a section 24(2) hearing to determine whether the evidence must be excluded needs to be scheduled.
7. Is there a dispute as to whether the accused has standing? In other words, does the accused reasonably expect privacy in the place, thing or information searched? If there is a dispute about standing, a hearing must be scheduled to determine the issue. It can usually proceed on written argument, but the defence could call evidence, including the accused. Time estimate for standing application: _____ (hearing should be done as soon as possible because if there is no standing, there cannot be a section 8 *Charter* challenge)
8. Does the defence intend to challenge the contents of the ITO – if so, is it a facial or sub-facial challenge?
 - If it is a facial challenge - the attack is restricted to deficiencies apparent on the face of the ITO or warrant. For example, the wrong address or a lack of reasonable grounds. Time estimate for facial challenge to warrant: _____
 - If it is a sub-facial challenge – the attack is directed at the reliability of the information in the ITO/affidavit. For example, the ITO contained false or misleading information.
 - The accused must seek leave to cross-examine the affiant and/or sub-affiant (author) of the ITO/affidavit. Does the Crown consent to areas of cross-examination? If not, a hearing will need to be scheduled for a judge to determine whether there is a reasonable likelihood that cross-examination will elicit testimony of probative value. For example, testimony that would undermine a pre-condition of the warrant. What is the time estimate for the application to seek leave to cross-examine the affiant: _____ with time in between for cross-examination and time estimate for cross-examination of the affiant: _____
 - If the Crown concedes to leave to cross-examine being granted for specific areas then the application for leave and the cross-examination of the affiant can be scheduled for the same day, otherwise, the judge might require some time to deliberate. Time estimate for cross-examination of the affiant: _____
 - A section 24(2) hearing following the judge's decision should also be scheduled in anticipation that the judge finds a breach.
9. Is there more than one warrant being challenged – do subsequent warrants rely upon the fruits of the first warrant – i.e. will there be excision of later warrants?
10. Will the ruling(s) decide the case?

SEARCH INCIDENTAL TO ARREST OR CONSENT SEARCH

1. Are there any search and seizure issues that do not involve a warrant or production order?
2. Has *Charter* notice alleging a section 8 breach been provided, and if not, what is the notice deadline: _____
3. Does the Crown concede the breach? If so, go straight to section 24(2).
4. Are there any standing issues? Time estimate for hearing: _____
5. If there is standing, how much time will be required for the section 8 hearing: _____
6. How much time for the section 24(2) application: _____

OTHER VOIR DIRES/MOTIONS

- | | |
|---|--|
| <input type="checkbox"/> YCJA Statement Compliance | |
| <input type="checkbox"/> Similar Fact (Between counts or other incidents outside the information) | |
| <input type="checkbox"/> Hearsay (Tendered for the truth of its contents) | |
| <input type="checkbox"/> Electronic Evidence (any issues concerning authenticity s 31.1 CEA) | |
| <input type="checkbox"/> Photo Lineup | |
| <input type="checkbox"/> Recognition Evidence | |
| <input type="checkbox"/> Other | |

ADMISSIONS

ADMISSION SOUGHT	ADMISSION MADE / REFUSED / BEING CONSIDERED
Alleged Offence Date	
Jurisdiction	
Identity / DNA	
Age of the complainant	
Medical Report (Is it Legible)	
Injuries (Bodily Harm/Aggravated)	
Photographs or CCTV footage	
911 call	
E-Communication (e.g., Text/Social Media)	
Continuity of Seized Items	

Quantity/Nature of Substance	
Toxicology results, including Certificate of Analysis	
Voluntariness of Statements	
Bound by a Court Order	
PRELIMINARY INQUIRY ISSUES	
Has the statement of Issues been filed?	Is Committal in issue?
Does counsel intend to explore areas like potential <i>Charter</i> breaches?	Will the Crown make an application under section 540(7) for a paper witness? (Should be scheduled in advance of the preliminary inquiry.)
Is a focus hearing required? If so, will focus hearing judge become seized?	Will the defence make an application under section 540(9) to cross-examine paper witness? (Should be scheduled in advance of the preliminary inquiry.)
A preliminary inquiry judge does not have jurisdiction to hear <i>Charter</i> , sections 276 or 278 applications – only a trial judge can hear them.	
SENTENCING	
<p>If the accused intends to plead guilty:</p> <ol style="list-style-type: none"> 1. Can the parties rely on an agreed statement of facts? If not, will there be a dispute about the facts (<i>Gardiner</i> Hearing)? Note section 606 requires a judge at the plea inquiry to be satisfied the facts support the charge. If a judge does hear the facts for the sole purposes of the inquiry the judge does not become seized with the sentencing. 2. Will any reports be requested: <ul style="list-style-type: none"> • Pre-sentence report • Pre-sentence report with a Gladue component • Pre-sentence report with a psychiatric or psychological component • Gladue report 3. Will the Crown be tendering or requesting that the complainant read a victim impact statement? Has the statement been disclosed and if so, are there any objections to its contents? 4. Will the parties be making a joint submission? Will the terms of any probation order, or the length and terms of any ancillary orders be part of the joint submission? 5. Parties must be in a position to address all of the ancillary orders, including their proposed length at the sentencing: <ul style="list-style-type: none"> • SOIRA 	

- Section 161
- Sections 109 or 110
- DNA
- Non-communication order while in custody

6. When will sentencing authorities be provided to the Judge: _____

7. How much time will be required for submissions: _____

SCHEDULING CONSIDERATIONS

1. Although identifying timelines for applications, judicial deliberation, etc. is imperative, the judicial case managers will appreciate some flexibility.
2. Assess how much time the judge will require to deliberate and build that into the proposed schedule.
3. Consider whether any of the applications can be heard at the same time?
4. Can any parts of the applications be done through written submissions or with an agreed statement of fact?
5. Consider what the deadlines should be for filing written submissions and case authorities for the various applications, and replies.
6. The Crown and Defence should identify whether the applications are contentious and, if so, whether it is the entire application or only parts of the application. Suppose both the Crown and Defence agree that the threshold for stage 1 of a section 276 application will be met; the court can set aside 15 minutes for stage 1 and direct that the complainant and their counsel be told that stage 2 will follow immediately thereafter.
7. Has the Crown discussed the proposed sections 278.92 or 278.2 applications with the complainant and their counsel to determine whether they are opposed and, if not, whether they are prepared to waive its application?
8. If the parties anticipate either the section 276 or RIPOT applications being successful, they should consider whether the evidence will go in by an agreed statement of fact or through a list of pre-determined questions and be in a position to assist the trial judge.
9. Do any of the applications depend on the outcome of another? For example, following a third-party records application, the defence might be required to make a section 276 or section 278.92 application.

10. Will any of the applications determine the outcome of the trial? For example, the admissibility of a statement. If so, schedule it early.

Total Trial/Preliminary Hearing Estimates

Pre-trial Application Time Estimates