



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

NOTICE TO THE PROFESSION

*****NEW*****

Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador

The Supreme Court of Newfoundland and Labrador, in consultation with its Criminal Bar and Bench Committee, recently engaged in a review of its *Criminal Proceedings Guidelines*, which were first implemented by this Court in 2010 to provide guidance to parties in criminal matters. This review led to the finalization and approval of the *Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador* (“the rules”), which will be published in the Canada Gazette on May 30, 2018, and come into force on July 1, 2018.

The major aim of this review was to ensure that the rules provide for effective and consistent judicial pre-trial management of criminal cases. It is hoped that the changes thereby introduced will better enable the court and the parties to ensure that criminal trials are completed within the time limits set out by the Supreme Court of Canada in the *R. v. Jordan* decision.

The purpose of this notice is to highlight the more significant changes from the current practice introduced by these rules. This does not represent a complete overview of the rules and members of the Bar are encouraged to review the rules in their entirety. The Court will, in short course, also be releasing a practice note setting out its expectations with respect to the pre-trial management of criminal cases under these rules. (The Practice Directive will be circulated by email, tweeted out, and posted on the Court’s website.)

FOCUS MEETINGS

Focus meetings, which were required under the *Criminal Proceedings Guidelines*, are no longer provided for or required in the rules.

FIRST APPEARANCE IN ARRAIGNMENT COURT

The rules provide, at rule 6.02(d), that the judge presiding at an accused person’s first appearance in arraignment court *shall* schedule a date for the trial, if appropriate. This amendment ensures that trial dates are set as early in the process as possible, keeping in mind the *Jordan* time limit. Parties and the court can then work backwards from the trial date in order to schedule required pre-trial applications, conferences, and any other procedural steps.

PRE-TRIAL CONFERENCES

As under the *Criminal Proceedings Guidelines*, the rules provide that, if a matter is not case managed, the judge presiding in arraignment court shall schedule a Pre-Trial Conference (PTC) to be held within 90 days of the filing of the indictment (see rules 6.02(2)(b) and 9.02(1)). The rules clarify that this does not limit the number of PTCs that may be held in a proceeding (see rule 9.02(2)).

Where a PTC is set before a matter is ordered to be subject to case management, the PTC will be converted to a case management meeting (see rule 9.03(2)).

The rules provide that a date for a subsequent PTC may be set by a judge in arraignment court or by a registry clerk following an informal request to the registry (see rule 9.03(3)). With respect to the latter method of setting a PTC, the clerk will only provide a date where counsel for both parties consent to appearing and a judge agrees that it is appropriate to set a date for a PTC in this manner.

The rules, like the *Criminal Proceedings Guidelines*, require that the prosecutor and counsel for the accused jointly prepare a Pre-Trial Report (formerly a “Pre-Trial Conference Report”) prior to attending at the PTC (see rule 9.04(1)). The rules now provide, however, that where there are co-accused, a prosecutor may jointly prepare a Report with each separate co-accused (rule 9.04(2)). The rules also provide that, where a PTC is enlarged or rescheduled after the filing of the Report, the parties must prepare a new Report or certify to the Court that there is no change to the information or positions as set out in that previously filed (see rule 9.04(6)).

Parties will no longer be required to file a Trial Readiness Report prior to their appearance in arraignment court immediately following attendance at a PTC (this was required under former rule 10.08). Similarly, the restriction on setting a trial date until after the completion of a resolution conference and a PTC that was set out in the former rule 10.09(2) is no longer included in the rules.

CASE MANAGEMENT

Some of the more significant changes from current practice relate to the provisions on case management. For instance, the situations in which a case management order will presumptively be made have been expanded. Previously, a case management order would presumptively be made where an accused was charged with 10 or more offences or the trial of the matter was expected to exceed 20 days. Under the rules, such an order will be made where the accused is charged with 6 or more offences or the trial of the matter is expected to exceed 5 days (see rules 10.03(b) and (c)).

Whereas previously there had been no requirement to file a report prior to attending a case management conference, the rules now provide that the prosecutor and counsel for the accused must jointly prepare a Pre-Trial Report prior to attending the first case management conference

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(see rule 10.05(2)). The case management judge may also require the parties to file an updated Pre-Trial Report prior to attendance at a subsequent case management conference.

The rules now provide that where a matter arises at a case management conference that can only be dealt with in open court (see for example, s. 551.3(1)(g)), the case management judge may, where necessary, convert the case management conference to a hearing to deal with this matter in an expedient manner. Note however that the judge's ability to hear evidence at any such hearing may be restricted – see s. 650.

If you have any questions with respect to the above, please email the court at supcourtinquiries@supreme.court.nl.ca.

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Newfoundland and Labrador