

**In the Supreme Court of Newfoundland and Labrador
CR FORM 9.04**

Supreme Court File #: _____ CR

BETWEEN:

HIS MAJESTY THE KING v. _____
(name of accused)

PRE-TRIAL REPORT

NOTE:

- 1. This form must be completed in all cases and signed by the assigned prosecutor, or a prosecutor authorized to bind the Crown, and by counsel of record for each accused person. An accused person who is not represented by counsel is not required to complete this form unless ordered to do so.**
- 2. The parties are encouraged to discuss the issues to be addressed at the pre-trial conference/case management conference in advance of the conference.**
- 3. The parties must provide their position on each issue, and not indicate “will advise”, or “not as yet”, etc.**
- 4. The parties must jointly complete this form and fax or deliver it to the other parties and the court in accordance with the Rules.**
- 5. If the parties cannot agree on the contents of this report, the parties shall outline the points of difference between them, sign the report and submit it to the court within the time set out in the Rules.**
- 6. The information that is provided in this report and at the pre-trial conference/case management conference does not bind the parties, however, it shall be given in good faith and shall be as accurate as possible at the time it is given.**
- 7. If any party changes a position taken on this form or a position taken during the pre-trial conference/case management conference, he or she must provide written notice to the other party and the court of the change in position, in addition to any notice required by the Rules.**
- 8. If counsel do not indicate either on this form or at the pre-trial conference/case management conference that an application will be brought, the presumption is that no applications will be heard. The failure to notify the other side and the court of any application either on this form or during the conference will be a factor considered by the trial judge in determining whether the new position has prejudiced the other party and whether any application may proceed.**
- 9. The prosecutor must attach a brief synopsis of the allegations to this form.**

This report has been prepared by:

Prosecutor: _____
(name, address, telephone number and fax number)

Accused/Counsel for the Accused: _____
(name of both accused and counsel where applicable, address, telephone number and fax number)

Have the parties discussed the issues raised in this form after the committal for trial?

Yes No

Charges:

1. Chronology

(a) Date(s) of Offence(s): _____

(b) Date of Arrest: _____

(c) Date of Committal for Trial: _____

(d) Date Indictment filed: _____

(e) Date Information sworn: _____

(f) 30 months from date Information sworn: _____

2. Form of Judicial Interim Release

(a) Is the accused detained in custody on this/these charge(s)? Yes No

(b) Is the accused detained in custody on any other charges? Yes No

3. Preliminary Inquiry: Waived? Yes No Length: _____

Transcript: Available _____ Date Ordered _____

4. Disclosure: Complete? Yes No

(a) Outstanding issues: _____

(b) Lost/destroyed: _____

(c) Withheld/delayed: _____

5. Mode of Trial: Current Election: Judge and jury Judge alone

(a) Will there be a re-election to be tried by: Judge and jury? Judge alone?

(b) Will the prosecutor consent? Yes No

(c) Additional comments regarding re-elections: _____

(c.1) Will there be a request for alternate jurors or to have more than 12 jurors sworn in pursuant to s. 631(2.1) or (2.2)? Yes No

(d) Challenge for cause: Yes No

(e) (i) *Parks* Yes No

(ii) *Publicity* Yes No

(iii) *Other* _____

(f) Does the accused have or seek an order under s. 530 that his/her trial be held in French or as a bilingual trial? Yes No

(g) Does the prosecutor oppose or dispute the order? Yes No

6. Pre-Trial Applications on the Indictment

(a) Quash committal for trial Yes No

(b) Quash indictment Yes No

(c) Quash a count(s) in indictment:

(i) relying on s. 581(1) Yes No

- (ii) relying on s. 581(3) Yes No
- (d) Sever count(s) in indictment Yes No
- (e) Sever accused Yes No
- (f) Particulars Yes No
- (g) Change of venue Yes No
- (h) Amendment(s) Yes No
- (i) Other Yes No _____

7. Pre-Trial Applications – Prosecutor

Statements of the Accused

- (a) Is the prosecutor seeking to obtain rulings as to the admissibility of statements to persons in authority? Yes No
- (b) Brief summary of circumstances surrounding taking statement: _____

- (c) Is the prosecutor seeking to introduce the statement? Yes No
- (d) Is the prosecutor seeking only a ruling as to admissibility? Yes No
- (e) Does the accused dispute admissibility? Yes No
- (f) Brief summary of the position of the accused: _____

- (g) Form of statement: Oral Written Audiotaped Videotaped
- (h) If the statement is audio or video taped, is there a transcript? Yes No
- (i) If no transcript is available, will the prosecutor provide one in advance of trial?
Yes No
- (j) Date to be made available: _____
- (k) Length of statement(s): _____
- (l) *Voir dire* required Yes No

(m) *Voir dire* issues:

| | | |
|------------------------------------|------------------------------|-----------------------------|
| Recipient as a person in authority | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Voluntariness | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| s. 10 (a) | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| s. 10 (b) | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| s. 7 | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

(n) Number of witnesses to be called on *voir dire*: Prosecutor _____ Accused _____

(o) Time estimate for *voir dire*:

| | <u>Evidence</u> | <u>Argument</u> |
|------------|-----------------|------------------|
| Prosecutor | _____ | Prosecutor _____ |
| Accused | _____ | Accused _____ |

(p) If there is more than one issue, do counsel agree that a blended *voir dire* is appropriate? Prosecutor: Yes No Accused: Yes No

8. Other Disreputable Conduct Evidence, including Similar Fact

(a) Is the prosecutor seeking to introduce prior disreputable conduct evidence, relying on incidents not covered by the indictment? Yes No

(b) Nature of evidence: _____

(c) Does the prosecutor seek to have admissibility determined in pre-trial application?
 Yes No

(d) If the prosecutor does not seek to obtain a ruling before the trial starts, when does the prosecutor wish to have the *voir dire*? _____

(e) Does the accused dispute admissibility? Yes No

(f) How does the prosecutor seek to introduce the evidence on the *voir dire*?

| | | |
|--------------------------------|------------------------------|-----------------------------|
| (i) <i>Viva voce</i> evidence | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (ii) Agreed statement of facts | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (iii) Witness statements | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (iv) Transcripts | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

(g) Does the accused consent to the manner in which the prosecutor seeks to introduce the evidence on the *voir dire*? Yes No

(h) Comments: _____

(i) Time estimate for *voir dire*:

| | <u>Evidence</u> | <u>Argument</u> |
|------------|-----------------|------------------|
| Prosecutor | _____ | Prosecutor _____ |
| Accused | _____ | Accused _____ |

(j) Is the prosecutor seeking to rely on disreputable conduct evidence, relying only on the counts in the indictment? Yes No

9. Principled Exception to the Hearsay Rule

(a) Does the prosecutor seek to introduce any evidence relying upon the principled exception to the hearsay rule? Yes No

(b) If so, what is the nature of the evidence? _____

(c) Does the accused contest admissibility? Yes No

(d) If yes, does the accused contest: Necessity Yes No

Reliability Yes No

Prejudicial effect/probative value Yes No

(e) How does the prosecutor propose to introduce the evidence on the *voir dire*?

(i) *Viva voce* evidence Yes No

(ii) Agreed statement of facts Yes No

(iii) Witness statements Yes No

(iv) Transcripts Yes No

(f) Does the accused consent to the manner in which the prosecutor seeks to introduce the evidence on the *voir dire*? Yes No

(g) Comments: _____

(h) Time estimate for *voir dire*:

| | <u>Evidence</u> | <u>Argument</u> |
|------------|-----------------|------------------|
| Prosecutor | _____ | Prosecutor _____ |

Accused _____

Accused _____

10. After the Fact Conduct Evidence

(a) Will the prosecutor be seeking to tender any evidence of after the fact conduct by the accused? Yes No

(b) If so, what is the nature of the evidence? _____

(c) Does the accused contest admissibility? Yes No

(d) How does the prosecutor propose to introduce the evidence on the *voir dire*?

- (i) *Viva voce* evidence Yes No
- (ii) Agreed Statement of facts Yes No
- (iii) Witness statements Yes No
- (iv) Transcripts Yes No

(e) Does the accused consent to the manner in which the prosecutor seeks to introduce the evidence on the *voir dire*? Yes No

(f) Comments: _____

| | | |
|--|------------------|------------------|
| (g) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

11. Intercepted Private Communications

(a) Does the prosecutor seek to introduce wiretap evidence? Yes No

(b) Brief overview of evidence: _____

(c) Does the accused require a *voir dire* to determine admissibility? Yes No

(d) Brief overview of the position of the accused: _____

(e) Authorization: Consent, s. 184.2 Authorization, s. 186

Other: _____

(f) Issue to be litigated: facial validity sub-facial validity

Other: _____

| | | |
|--|------------------|------------------|
| (g) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

12. Other legal issues requiring rulings the prosecutor anticipates will arise:

(a) _____

| | | |
|--|------------------|------------------|
| (b) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

13. Competency of Witnesses

(a) Does the prosecutor/accused intend to call any witness who is under the age of 14?

Yes No

(b) Does the prosecutor/accused intend to challenge the capacity of any witness on the basis of mental capacity? Yes No

(c) Name of witness and basis of challenge: _____

14. Manner in which Evidence is to be Introduced

(a) Does the prosecutor or accused seek to have any witness's evidence introduced:

(i) by video link, pursuant to s. 714.1? Yes No

(ii) by reading in evidence previously taken pursuant to s. 715? Yes No

(iii) by videotaped evidence, pursuant to s. 715.1? Yes No

(iv) as vulnerable witness? Yes No

(iv.1) while the witness is behind a screen or outside the courtroom pursuant to s. 486.2? Yes No

(v) other means? Yes No Details: _____

(b) Does the opposing party consent to the admissibility of the evidence in the manner proposed? Yes No

(c) If opposed, estimated time for:

| | <u>Evidence</u> | <u>Argument</u> |
|------------------|------------------|------------------|
| Prosecutor _____ | Prosecutor _____ | Prosecutor _____ |
| Accused _____ | Accused _____ | Accused _____ |

15. Support Person

Will any of the prosecutor's witnesses require a support person, pursuant to s. 486.1(1)?

Yes No

Details: _____

Does the accused oppose the order? Yes No

16. Publication Bans/Deferred Publication Orders

(a) Does the prosecutor seek an order pursuant to s. 486.4 or s. 486.5 of the Criminal Code? Yes No

(b) Does the accused oppose the order? Yes No

(c) If opposed, estimated time for:

| | <u>Evidence</u> | <u>Argument</u> |
|------------------|------------------|------------------|
| Prosecutor _____ | Prosecutor _____ | Prosecutor _____ |
| Accused _____ | Accused _____ | Accused _____ |

(d) Does either party seek other publication bans or deferred publication orders?

Prosecutor Yes No

Accused Yes No

(e) If yes to (d), under what section of the Criminal Code is the order sought? _____

Provide details of order sought, media to be notified, timing of hearing, time estimate for

hearing: _____

(f) Does the other party oppose the application? Yes No

(g) If opposed, provide time estimate for evidence and separate time estimate for

argument: Evidence: _____ Argument: _____

17. Privilege Issues

(a) Will the prosecutor be raising issues of privilege? Yes No

(b) Will the accused be raising issues of privilege? Yes No

(c) If yes, please specify the nature of evidence and issue of privilege: _____

(d) Basis upon which the party seeking admission relies: _____

(e) How does the party claiming privilege seek to introduce the evidence on the *voir dire*?

(i) *Viva voce* evidence Yes No

(ii) Agreed statement of fact Yes No

(iii) Witness statements Yes No

(iv) Transcripts Yes No

(f) Does the other party consent to the manner in which the evidence will be introduced on the *voir dire*? Yes No

(g) Comment: _____

| | | |
|--|------------------|------------------|
| (h) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

18. Pre-trial Applications – Accused

(a) Challenge to Legislation:

Specifics of challenge: _____

(b) Does the prosecutor oppose the application? Yes No

| | | |
|--|------------------|------------------|
| (c) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

19. Applications to Stay Proceedings based upon:

(a) Abuse of Process

(b) Contravention of *Charter* section: s. 7

(c) s. 11(b)

(d) Other

(e) Overview of the position of the accused: _____

(f) Overview of the position of the prosecutor: _____

(g) Time estimate for *voir dire* (evidence and argument):

| | |
|------------------|---------------|
| Prosecutor _____ | Accused _____ |
|------------------|---------------|

20. Applications to Exclude Evidence based upon s. 24(2) alleging breaches of:

(a) s. 7

s. 8 warrantless search search warrant order authorization

Issue: facial validity sub-facial validity execution

Other: _____

s. 9 s. 10(a) s. 10(b)

Other: _____

(b) Overview of the position of the accused: _____

(c) Overview of the position of the prosecutor: _____

(d) Evidence sought to be excluded: _____

(e) Nature of breach: _____

(f) Time estimate for *voir dire*:

Evidence

Argument

Prosecutor _____

Prosecutor _____

Accused _____

Accused _____

21. Third Party Records Applications Yes No

(a) Relying upon: *Mills*, s. 278.2 Yes No *O'Connor* Yes No

(b) Nature of Records: _____

(c) Time estimate for *voir dire*:

| | <u>Evidence</u> | <u>Argument</u> |
|------------|-----------------|------------------|
| Prosecutor | _____ | Prosecutor _____ |
| Accused | _____ | Accused _____ |

(d) How long prior to trial does the applicant propose the application be heard? _____

22. Evidence of the Complainant’s Prior Sexual Activity – s. 276 Yes No

(a) Nature of evidence: _____

(b) Manner in which the accused seeks to establish evidentiary basis on application: _____

(c) Time estimate for *voir dire*:

| | <u>Evidence</u> | <u>Argument</u> |
|------------|-----------------|------------------|
| Prosecutor | _____ | Prosecutor _____ |
| Accused | _____ | Accused _____ |

23. Evidence of Other Suspects

(a) Nature of evidence: _____

(b) How does the accused propose to introduce evidence on *voir dire*?

(i) *Viva voce* evidence Yes No

(ii) Agreed statement of facts Yes No

(iii) Witness statement Yes No

(iv) Other: _____

(c) Does the prosecutor oppose admissibility? Yes No

| | | |
|--|------------------|------------------|
| (d) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

24. Character of Victim

(a) Nature of Evidence: _____

| | | |
|--|------------------|------------------|
| (b) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

25. Other Legal Issues the Accused Anticipates will Arise

(a) _____

| | | |
|--|------------------|------------------|
| (b) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

26. Witnesses

26.1 Witnesses to be called by the Prosecutor

(a) Names of witnesses to be called by the prosecutor: _____

(b) Does the prosecutor intend to call expert witnesses? Yes No

(c) Field(s) of expertise: _____

(d) Issues upon which the evidence will be introduced: _____

(e) Does the accused contest the admissibility of the expert evidence? Yes No

(f) Basis upon which admissibility of evidence contested:

- Witness is not an expert
- Area of expertise requires a *voir dire*
- Witness cannot give evidence sought

(g) Comments: _____

| | | |
|--|------------------|------------------|
| (h) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

26.2 Witnesses to be called by the Accused

(a) Does the accused intend to call expert witnesses? Yes No

(b) Field of expertise: _____

(c) Issues upon which the evidence will be introduced: _____

(d) Does the prosecutor contest the admissibility of the expert evidence? Yes No

(e) Basis upon which admissibility of evidence contested:

- Witness is not an expert
- Area of expertise requires a *voir dire*
- Witness cannot give evidence sought

(f) Comments: _____

| | | |
|--|------------------|------------------|
| (g) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |

Accused _____

Accused _____

27. Position of Accused in Court

- (a) Will there be an application to have the accused sit at counsel table? Yes No
- (b) Does the prosecutor consent? Yes No
- (c) Will the accused be shackled at trial? Yes No

28. Absence of Accused from Court

(a) Will there be an application for the accused to be absent from the trial, pursuant to s. 650(2)(b)? Yes No

(b) If yes, what is the basis for the application? _____

29. Positions of the Parties

(a) Prosecutor:

(i) Upon what evidentiary basis does the prosecutor seek to establish liability of each accused?

(ii) Upon which section(s) of the *Criminal Code* does the prosecutor rely in order to establish the liability of each accused?

(iii) Does the prosecutor submit any offences are included in the count(s) in the indictment?

(b) Accused:

(i) Does the accused submit any offences are included in the count(s) in the indictment?

(ii) What is the position of the accused? _____

30. Fitness to Stand Trial

(a) Will the prosecutor raise the issue of the accused’s fitness to stand trial?

Yes No

(b) Will the accused raise the issue of the accused’s fitness to stand trial? Yes No

(c) If raised, will the application be opposed? Yes No

| | | |
|--|------------------|------------------|
| (d) Time estimate for <i>voir dire</i> : | <u>Evidence</u> | <u>Argument</u> |
| | Prosecutor _____ | Prosecutor _____ |
| | Accused _____ | Accused _____ |

31. Interpreters

(a) Does the accused require an interpreter?

Yes No

(b) If yes, for which language(s)? _____

(c) Do any of the prosecutor’s witnesses require an interpreter?

Yes No

(d) If yes, for which language(s)? _____

(e) Should two interpreters be required? Yes No

32. Additional Courtroom Equipment required

(a) Videoconferencing equipment Yes No

(b) Television and VCR Yes No

(c) Television and CD/DVD player Yes No

(d) Hearing devices Yes No

(e) Other: _____

33. Courtroom and Witness Security Issues

(a) Does any party believe that increased courtroom security issues are raised in this matter? Yes No

Details: _____

(b) Will the prosecutor or a witness make an application under s. 486.7 for an order for the security of a witness? Yes No

Details: _____

34. Other Potential Legal Issues

35. Is it reasonably anticipated that any of the following defences/triable issues will be raised?

Accident

Identity

- Alibi
- Automatism
- Compulsion
- Defence of property
- Diminished capacity
- Duress
- Entrapment
- Honest but mistaken belief in consent
- Intoxication (Drugs Alcohol)
- Knowledge
- Necessity
- Not criminally responsible
- Possession
- Provocation
- Self-defence

36. Non-Contentious Issues

| | Admitted | Not Contested | N/A |
|--|--------------------------|--------------------------|--------------------------|
| Jurisdiction | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Identity of the accused | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Date of the offence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Continuity of exhibits | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Medical evidence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Documentary evidence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ownership | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Value of property | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Accused as driver | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Death/injuries caused by accused | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Expert's report | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Age of complainant | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Nature of drug | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Amount of drug is "for the purpose of trafficking" | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Value of drug | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Service of notice | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Photographs | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

37. Other factual, evidentiary or legal admissions sought by the prosecutor, or conceded by the accused:

- Does the accused agree?
1. _____ Yes No
-
2. _____ Yes No

-
3. _____ Yes No
-
4. _____ Yes No
-
5. _____ Yes No
-

38. Affidavit Evidence

(a) Does the prosecutor intend to file affidavit evidence? Yes No

(b) If so, please specify: _____

(c) Will the accused seek leave to have the witness testify? Yes No

39. Notes

(a) Does the prosecutor object to the jury taking notes during the trial? Yes No

(b) Does the accused object to the jury taking notes during the trial? Yes No

40. Time Estimates

a) Anticipated number of witnesses to be called by the prosecutor: _____

b) Prosecutor's estimate for *voir dire*s: Evidence _____ Argument _____

c) Prosecutor's time estimate for trial: _____

d) Accused's time estimate for *voir dire*s: Evidence _____ Argument _____

e) Accused's time estimate for trial: _____

41. Disagreement on contents of this report:

(a) Are there any points of disagreement between the parties on the contents of this report? Yes No

(b) If so, please specify: _____

