

## NOTICE TO THE PROFESSION

**TO:** Judges and Justices of the Peace of the Ontario Court of Justice, Crown and Defence Counsel, Legal Aid Ontario, Trial Coordinator, Judicial Assistant, All Justice System Participants

**FROM:** Justice Lynn Robinson, Ontario Court of Justice, Local Administrative Judge – Niagara (St. Catharines and Welland)

**DATE:** December 15, 2023

**RE:** Implementation of *Jordan-Compliant Trial Scheduling Direction*

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### Overview:

Effective January 2, 2024, all matters in Case Management court sworn before January 1, 2023, **SHALL** be adjourned to the next Judicial Intensive Case Management Court (JICMC) for the purposes of setting a date for trial or preliminary inquiry, or resolve the matter. It is to be understood by the profession that when the matter is adjourned to JICMC, the parties must complete all of the necessary steps to schedule a date for trial/preliminary inquiry before appearing **IN PERSON** in JICMC.

A Justice of the Peace **MAY** direct any matter sworn more than six (6) months prior to JICMC where the Justice of the Peace has directed the parties to complete the necessary steps to schedule a trial or preliminary inquiry and the parties have failed to do so. The Justice of the Peace **MUST** endorse on the Judicial Endorsement form what expectations of the Court had not been met.

The Defence or the Crown may ask for JICMC in cases where there is a dispute about outstanding disclosure which prevents resolution or setting the matter for trial or preliminary inquiry. The Defence may also request JICMC where they are unable to take next steps due to Crown or police delay. The Justice of the Peace will adjourn the matter to JICMC court and will note the issue on the Judicial Endorsement Form.

The Crown, defendant and counsel (or a fully instructed agent) **MUST** appear in person in JICMC and they must complete all of the necessary steps to be ready to set the matter for trial or for resolution at the next appearance.

Self-represented individuals are subject to the same Direction. However, where they have received the initial disclosure, they should be adjourned to a time slot in the self-represented JPT court. It will rarely be appropriate to adjourn a self-represented person to JICMC.

This implementation strategy will be reviewed in mid-February of 2024 and further guidance will be given. It is expected that the parties will be able to comply with the Direction of the Chief Justice to fix a date for trial, preliminary inquiry or resolution before six (6) months have passed since the sworn date. If we collectively achieve this result, we can expect much less of a need for JICMC attendances.

### **Background and Discussion:**

On November 1, 2023, Chief Justice Sharon Nicklas issued a Province-wide *Jordan*-Compliant Trial Scheduling Practice Direction. The objective of this initiative is to ensure the Ontario Court of Justice offers a criminal trial date that complies with *R. v. Jordan* and applies to accused persons who are represented by counsel and self-represented accused.

On November 1, 2023, the Ontario Court of Justice in Niagara commenced the implementation of this Direction by first addressing matters that were over 18 months old. It had been suggested that by phasing in the implementation the parties would have some time to adjust to the new Directive.

We have had discussions with a variety of stakeholders and have reviewed our initial implementation strategy.

The Provincial Directive mandates that within six (6) months of the date the Information is sworn, the parties will have addressed disclosure, conducted a meaningful Crown pre-trial and judicial pre-trial (JPT), if a JPT is necessary.

As the Province-wide practice direction states, if the parties anticipate a JPT will be required, the parties should schedule the JPT within four (4) months of the Information sworn date, even if substantial disclosure has not been received within that four-month period.

At the first court appearance after the six-month mark both the Crown and Defence are expected to be prepared to either resolve the matter or schedule a trial or preliminary inquiry date.

Trial or preliminary inquiry dates will continue to be scheduled by the Trial Coordinator via Zoom every business day from 8:30-10:30 a.m. The parties are expected to obtain these dates before attending the first court appearance after the six-month mark so that the dates can be confirmed on the court record at that appearance.

For cases with an Information sworn on or after November 1, 2023, the Court will offer a trial or preliminary inquiry date that is expected to result in the trial or preliminary inquiry being completed within 15 months of the date the Information was sworn. If either the Crown or Defence ask to waive or decline the *Jordan* compliant date offered by the Court, the matter will be scheduled as soon as possible into a JICMC before a Judge.

When the matter is addressed at that Court appearance, the explicit waiver must be clearly stated on the Court record. The explicit waiver will also be documented in e-mail communications between Counsel/self-represented accused and the Trial Coordinator (TC) or Assistant Trial Coordinator (ATC).

For cases with an Information sworn before November 1, 2023, where possible, the Court will offer a trial or preliminary inquiry date that results in the case being completed within 15 months of the Information sworn date. Where this is not possible, the Court will offer a trial or preliminary inquiry date that is expected to be completed as close as possible to 15 months from the Information sworn date.

The Court retains the discretion to insist on the scheduling of the trial or preliminary inquiry on dates which comply with the 15-month Province-wide directive, notwithstanding the explicit waiver offered by the accused and/or counsel.

The trial or preliminary inquiry dates will continue to be scheduled based on discussions at the Judicial pre-trial (JPT). The trial or preliminary inquiry dates will be set even in cases where specific items of disclosure are outstanding, counsel have not yet been retained, or the parties are continuing to discuss a potential resolution. Where such issues remain outstanding, when the TC provides the trial or preliminary inquiry dates, the TC will also provide a date for the parties to attend an "issue specific confirmation date" before the Judge who conducted the JPT or other Judge as necessary. The parties must identify the outstanding issues on the Court record and the presiding Justice will document the outstanding issue(s) on the Judicial Endorsement Form. The parties will be expected to take the steps necessary to address the outstanding issues prior to the "issue specific confirmation date".

Section 11(b) applications will be canvassed during the JPT and the Defence (counsel, authorized agent, or accused, if self-represented) is required to advise the JPT Judge if they intend to bring a s. 11(b) application.

Section 11(b) applications will be heard at least four (4) months before the trial and the parties must comply with the service and filing of materials as outlined in the Province- wide practice direction.

### **Necessary steps and Reasonable timelines:**

- 1) Disclosure – It is expected that on routine matters the Crown will have provided the initial disclosure and screening form to counsel or the defendant on or before the first appearance. It is reasonable for the Justice of the Peace to insist on an explanation for the lack of initial disclosure and screening form and to set a timeline for disclosure.
- 2) Time to book a CPT – **one day**. The Crown uses Appointlet and can offer dates immediately. Where the dates do not align with Defence counsel's availability they should telephone or email the virtual Crown or assigned Crown (if one is assigned) to request a date that is more convenient.
- 3) Time to conduct a CPT – in the usual course, **2 weeks** is a reasonable amount of time. Where the matter has been unduly delayed a shorter period may be directed. A pre-trial conference between Defence counsel and Crown counsel must take

place before the judicial pre-trial conference to identify agreements and admissions as well as issues in dispute. It is an expectation of the Court that both parties will participate meaningfully in these discussions and contribute to the preparation of the materials for the JPT.

- 4) Time to schedule a JPT – **one day or less.** This is done by email with the TC.
- 5) Time to conduct a JPT – **2 days.** We have a dedicated JPT Judge. If there are no limits on the schedule of the Crown or the Defence, a JPT can be scheduled in two (2) clear business days. In some situations, we can conduct same day JPTs if the paperwork has been provided by the parties.
- 6) Time to schedule a trial date or preliminary hearing date – **day of.** This can be done every business day from 8:30-10:30 a.m. by Zoom through the TC.

I appreciate that none of us, including the members of the Ontario Court of Justice received much notice of the Direction before it was announced. Most of us have had our workloads suddenly increased or at least substantially realigned. It will require on-going efforts, communication and co-operation to fully implement the Direction.

I hope that the initial phased in approach has given everyone some time to adjust.

Thank you for your cooperation.

**Justice Lynn Robinson, Local Administrative Judge - Niagara**