

## Consolidated Provincial Practice Direction for Criminal Proceedings

### Effective June 15, 2023

This Practice Direction/Amendment to the *Criminal Proceedings Rules* (“*Rules*”) applies to all criminal proceedings in the Ontario Superior Court of Justice (“SCJ”) province-wide unless stated otherwise, and is effective as of June 1, 2023. It replaces all previous Consolidated Provincial Practice Directions and Provincial Notices to the Profession, Parties, Public and Media.

This Provincial Criminal Practice Direction/Amendment to the *Rules* should be considered as amendments to the *Rules* of the SCJ. These amendments are made pursuant to the Court’s rule making authority s. 482(1) of the *Criminal Code* (“*Code*”) This document shall be considered publication of *Rules* or making *Rules* available to the public for the purposes s. 482(4) of the *Code* until such time as the *Rules* are fully reviewed, amended and published.

The purpose of this Practice Direction/ Amendment to the *Rules* is to enhance the timeliness, appropriate scheduling and trial readiness of criminal proceedings in the SCJ.

The provisions in this Practice Direction /Amendment to the *Rules* are subject to any orders made by the presiding judge in a specific proceeding.

Counsel and parties are advised to refer to the applicable Region-specific Practice Directions which can be found [here](#). Region-specific Notices to the Profession are also still in effect and counsel, parties, the public and the media should consult the [Regional Notices](#) for specific scheduling and Region-specific practices and protocols including the [Region’s direction on how the Court’s Guidelines determining the mode of proceeding in Criminal will be scheduled](#).

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## Part I: Filing Materials Electronically & Uploading for use in Court

### A. Filing Materials Electronically

#### 1. Filing electronically by email

- (a) All filings for Criminal matters must be done electronically by email to the address(s) located in the **Region's Notice** and follow the protocol set out in the **Region's Notice** or by any other method as established by the Court.
- (b) The requirement of electronic filing of documents applies to all matters. The court will **not** accept a paper copy except as set out in **paragraph 2.**
- (c) Filings must comply with any restrictions that have been placed on the length of material by the Court at a judicial pretrial, the *Rules* or as otherwise directed by the Court.
- (d) All filings **must** comply with the Court's **standard naming protocol** as set out in **Part I: B**

#### 2. Filing by Self-represented defendants

Where a self-represented person does not have access to electronic means for e-filing, the Court will continue to accept hard copy filings as set out in the *Rules*, unless the Court orders otherwise. In such circumstances, self-represented parties should contact their local courthouse by email or telephone or attend in person for directions as to how to proceed. Contact information for all SCJ courthouses is posted on the **Ministry of the Attorney General website.**

#### 3. Electronic Signatures

The Court will accept electronically signed documents where a signature is required. An electronic signature consists of electronic information that identifies the signatory and the

date and place of signing. Any reference to a signature in the *Rules* is to be interpreted and considered amended in accordance with this section.

#### **4. Electronic Service and proof of service**

(a) **Electronic service:** The Court dispenses with the requirement for personal service where personal service is required. Where personal service is stipulated, e-mail service, in compliance with **Rules 5.05(4) and 5.01(6)** shall suffice, so long as the requirements of **Rule 5.09(5)** are met. Filed materials must indicate when and how service on responding parties was made.

(b) **Proof of Service:** When a document has been served by email and is being filed electronically, a formal affidavit of service is not required to be filed. However, the person filing the document should retain a copy of any relevant affidavit(s) of service and/or related documents (e.g., email confirmations) required by **Rule 5.09(5)** and should be prepared to produce such documents to the Court on request.

#### **5. Subpoenas**

For greater certainty, a subpoena may be served upon a witness by electronic means, including e-mail communication in accordance with **Rule 5.05(4)** and **5.01(6)**. Proof of service shall be in accordance with **Rule 5.09(5)**.

#### **6. Affidavits**

Where it is not possible to administer an oath in the physical presence of the deponent, a lawyer or paralegal may commission an affidavit by video. The affidavit should state that it was commissioned by video conference in compliance with the **Commissioners for Taking Affidavits Act**, R.S.O. 1990, c. C. 17 including O.Reg. 431/20 Administering Oath or Declaration Remotely.

The Court may require counsel who administers the oath by video to provide a copy of signed identification of the affiant, or an assurance to the Court that counsel viewed a copy (by video) of the affiant's identification or provide the Court with confirmation of the affiant's identification.

Where it is not possible to commission an affidavit by video conference, an unsworn affidavit may be delivered to the Court, but the deponent must be able to attend court in person or participate in any videoconference hearing (unless otherwise directed by the Court) to swear or affirm the affidavit.

## **7. Books of Authorities**

Caselaw and other source materials referenced in a factum should be hyperlinked to a publicly available free website such as CanLII whenever they are available on such a website.

Where hyperlinks are provided, it will not be necessary to file a Book of Authorities.

Authorities that are not available on a free public website, such as unreported decisions and excerpts from textbooks, shall be included in an abbreviated book of authorities and filed electronically in PDF format. The abbreviated book of authorities shall include a table of contents that has internal hyperlinks to the cases and textbook excerpts contained within it.

Counsel should specify the caselaw and secondary sources that they will be referring to in oral argument

Counsel should not include any caselaw or secondary materials already filed by the other party/parties.

## **8. Factums**

Factums are required for all applications except for adjournment applications, bail hearings/reviews and applications to remove counsel of record, unless otherwise directed by the Court.

Unless otherwise directed by the Court, factums shall comply with **Rule 33** except for any direction related to the “form of factum”.

The factum shall hyperlink authorities to a publicly available, free website such as CanLII, whenever they are available on such a website. Where hyperlinks are provided, it will not be necessary to file a Book of Authorities.

Authorities that are not available on a free public website, such as unreported decisions and excerpts from textbooks, shall be included in an abbreviated book of authorities and filed electronically in PDF format.

The factum must also include paragraph references each time a case is cited in the factum, with the applicable paragraph also hyperlinked.

Counsel should specify the caselaw and secondary sources that they will be referring to in oral argument.

## **9. Transcripts**

Electronically certified transcripts will be the default format for transcripts submitted to the Court. Counsel or parties who must file a transcript should file electronic versions of the transcripts, wherever possible.

**Certified Transcriptionist:** Transcripts must be certified by a certified transcriptionist to be accepted in court.

## **10. Electronic Indictments**

As of January 2023, the Court will no longer accept paper copies of Indictments.

### **B. Standard document naming protocol**

When documents are submitted to the court in electronic format, the document name **must** be saved as follows:

(i) Document type

(ii) Party submitting the document

(iii) Name of the party submitting the document (including initials if the name is not unique to the case), and

(iv) Date on which the document was created or signed, in the format DD-MM-YYYY (e.g. 12-OCT-2022).

**For example, documents should be saved as follows:**

**11b Application – Defence – Smith – 12-OCT-2022**

Document names **shall not** include firm-specific naming conventions, abbreviations, or file numbers.

Document names **shall not** include firm-specific naming conventions, abbreviations, or file numbers.

## **C. Uploading Electronic Documents for Use at Court: CaseLines**

### **1. Use of CaseLines**

CaseLines is now required for all Superior Court of Justice events.

CaseLines is an online platform where judges, parties, and court staff view electronic court documents before and during hearings.

With the exception of the documents listed in the **section at C.4. “Items that should not be uploaded onto CaseLines in Criminal”**, all court documents must be uploaded to CaseLines regardless of whether the hearing is in person or virtual.

Information about how to use CaseLines is available on the Court’s website **here** <https://www.ontariocourts.ca/scj/caselines/>.

This step is different from filing documents with the court. Documents uploaded to CaseLines for use at a hearing should have already been filed by the party as set out in **Part I Section A**. Where there is a difference between the filed version of a document and the version provided to the court for use at a hearing, the filed version shall prevail.

Parties will receive an email from CaseLines with a link for their matter. Include your current email addresses on all documents that are filed with the court and make CaseLines a trusted sender by saving caselines.com in your contacts list, or regularly check your junk folder for emails from CaseLines.

CaseLines will automatically alert parties to changes that occur in a bundle, for instance if a party uploads material or if the Court uploads an order or endorsement following the



event. These notifications are sent from [noreply@caselines.com](mailto:noreply@caselines.com) to the email address of all parties with access to the bundle. Staff provide this notification feature to parties when they are first invited into the case file. Parties and counsel should save [noreply@caselines.com](mailto:noreply@caselines.com) as a safe sender in their email settings.

## **2. Filing & Uploading**

Counsel must file materials electronically with the Court. After materials are accepted for filing by the court, counsel shall upload electronic copies of their documents into CaseLines for review by all participants before and during a court hearing.

CaseLines does not replace Court filing. Crown and defence counsel must file materials electronically by email to the address(s) located in the **Region's Notice** and follow the protocol set out in the **Region's Notice** or by any other method established by the Court and in accordance with the applicable *Rules* and this Practice Direction.

## **3. Access to CaseLines in Criminal**

In criminal matters, CaseLines access will be limited to judiciary, court staff and counsel.

Counsel are prohibited from inviting their clients/accused persons to access CaseLines.

Counsel are required to make other arrangements to share documents, as appropriate, with their clients.

No Criminal matters involving self-represented persons will use CaseLines.

## **4. Items that should not be uploaded onto CaseLines in Criminal**

- No materials related to child pornography.
- No document referring to a confidential informant.

- Unless specifically directed by the Court to do otherwise, Crown and defence counsel will not upload the following documents into CaseLines:
  - a sealed document
  - a document for which a sealing order is sought
  - a privileged document, or a document where privilege is being asserted
  - Any other document where counsel have concerns, until judicial direction is given. If counsel have concerns about uploading any specific item, they should seek the direction of the Court at a judicial pretrial. Counsel should ensure that this direction is placed on the record at the subsequent court appearance to be endorsed on the Indictment or other written record by the Registrar.

## 5. CaseLines Uploading Requirements

Unless otherwise directed by the Court, or prohibited by this Practice Direction, all materials filed with the Court are also to be uploaded on CaseLines. Materials uploaded to CaseLines must comply with the following requirements and deadlines:

(a) **All documents are to be uploaded in PDF format.** The indexes to all items should include **bookmarks**. Factums should contain **hyperlinks** to authorities and to the records. **Factums are also to be uploaded in Word format.**

(b) **Books of Authorities:** Caselaw and other source materials referenced in a factum should be hyperlinked to a publicly available free website such as CanLII whenever they are available on such a website. Where hyperlinks are provided, it will not be necessary to file a Book of Authorities. Authorities that are not available on a free public website, such as unreported decisions and excerpts from textbooks, shall be included in an abbreviated book of authorities and filed electronically in PDF format. The abbreviated book of authorities shall include a table of contents that has internal hyperlinks to the cases and textbook excerpts contained within it.

Counsel should specify the caselaw and secondary sources that they will be referring to in oral argument

Counsel should not include any caselaw or secondary materials already filed by the other party/parties.

(c) **Number pages:** Pages should be numbered sequentially within each PDF document.

(d) **Page Limits** –Abide by page limits set out in the *Rules* and this practice direction. Please split documents larger than 500 pages into multiple documents.

(e) **Use Document Naming Protocol and Number Your Documents** – Use the **Court's Standard Document Naming Protocol** when submitting documents to the court in electronic format. Documents are organized in each sub-bundle numerically, so you can control the order in which your documents appear by adding a number at the beginning of the file name (**i.e. 1 Factum – Respondent Smith – 01-JAN-2021**). If you upload a new document later, add it to the end of your numerical list so that it does not change the CaseLines-generated document and page numbers.

(f) **Upload materials to sub-bundle:** Upload materials into the sub-bundle created for the hearing (e.g. Pre-trial sub-bundle, Trial sub-bundle) at least 5 business days before the hearing or as otherwise directed by the Court. Do not upload documents into the Master Bundle.

(g) **Uploading deadline:** Counsel must upload materials they have filed with the Court at least **5 business days** in advance of the hearing. Counsel who rely on staff to upload their materials must ensure that this uploading deadline has been met.

## 6. CaseLines Hearing Requirements

At the hearing of a case where materials have been uploaded to CaseLines, counsel should be prepared to use CaseLines-generated page numbers and the Direct Others to Page function or to advise the court of the CaseLines page number when referring to documents.

## 7. Tips & Instructional Videos on Using CaseLines

See the Court's how-to tips & instructional materials and videos on using CaseLines [here](#).

## Part II : Meaningful appearances on Indictments

On every appearance on an Indictment in the SCJ, crown counsel, defence counsel and any self-represented accused person must be:

- (i) prepared to advise the presiding judge whether any previous time periods in the case in either the SCJ or OCJ and whether any adjournments or time periods to future scheduled events in the SCJ are attributable to defence delay or exceptional circumstances as described in *R. v. Jordan*, 2016 SCC 27. Counsel must also be prepared to identify the start and end dates for any such time periods.
- (ii) prepared to ensure that each appearance is meaningful, and
- (iii) must be prepared to advise the presiding judge the purpose of any adjournment request and why the matter is not ready to schedule a trial or resolution.

## Part III: Pre-trial Conferences

### A Pre-trial Conference Form Jointly Filed & Uploaded Form

Counsel (and accused, if self-represented) shall use the current Pre-Trial Form (Form 17/18: Combined Form 17 and Form 18-A1) on the Ontario Court Forms website.

Note: a new Pre-Trial form will be circulated in the Fall.

As of xxx , the Court will refuse to accept filing of any previous versions of the Pre-Trial Conference form. – *put this in when we get the new JPT form in use*

Counsel **must file and upload to CaseLines only one jointly filled** out Pre-Trial Conference Form. - *put this in when we get the new JPT form in use*

### B. Counsel not retained or only retained for judicial pre-trial

If counsel is not retained or is retained only through to the conclusion of the judicial pre-trial, the accused must be present at the judicial pre-trial and the pre-trial held in person.

The accused is bound by all positions taken at the judicial pre-trial by the lawyer who is acting/appearing on the basis of a limited scope designation. *Rule 28.04 (11)-(13)*

### **C. Directions and Orders of Pre-Trial Conference Judge**

The pre-trial conference judge may make any order that the *Rules* provide may be made by a judge, including an order with respect to the following:

- a. directing that factums are required, or are not required, in respect of a particular application;
- b. the nature, scope and content of other materials required in support of an application;
- c. the manner and timelines for the service and filing of notices, application records factums or other materials in support of an application;
- d. setting time limits for oral arguments of pre-trial applications that parties should expect will be imposed subject to the discretion of the trial judge; and
- e. the mode of proceeding as governed by the **Court's Guidelines to Determine Mode of Proceeding in Criminal**.

### **D. Pre-trial Conferences presumptively virtual**

As set out in the **Court's Guidelines to Determine Mode of Proceeding in Criminal**, all judicial pre-trials will be held virtually unless the Court directs that an in-person judicial pre-trial is required in light of the accused being self-represented, there being multiple accused in a case, the complexity of trial issues, the length of the trial, or any other factor the Court decides warrants an in-person judicial pre-trial.

### **E. Changes in Pre-trial positions and applications not addressed at the pre-trial conference**

(a) If any party changes the position taken on the completed Pre-Trial Conference form, they must provide written notice to the other party and the Superior Court Trial Office of

the change in position as soon as they determine their position has changed, in addition to any notice required by the *Rules* (**Rule 28:04 (11)**).

(b) Where the change will involve an additional application and/or will require more court time than determined at the pre-trial, counsel making the change shall arrange for a further judicial pre-trial conference forthwith. **Rule 28:04 (11)**

(c) Failure to notify the other side and/or the Trial Office of any application not indicated on this form will be a factor considered by the trial judge in determining whether the new position has prejudiced the other party, and whether any such application may proceed. **Rule 28:04 (11)**

(d) Where a new application is brought counsel must file any notices, records, facts, books of authorities and other materials required by the *Rules* unless a judge orders otherwise.

## **PART IV: Designations**

### **1. Designation Form:**

The Court continues to require its own designation following committal for trial using the new SCJ Form 18: <http://ontariocourtforms.on.ca/en/forms-under-the-criminal-proceedings-rules-of-the-superior-court-of-justice/>

### **2. Limited Scope Designations**

In addition to the full designation for retained counsel, the Court will accept filing of a “limited scope” designation that would apply for counsel who is retained only through to the conclusion of the JPT process and the setting of a trial date with or without counsel.

### **3. Defendant bound by positions**

The defendant is bound by all positions taken at the judicial pre-trial by the lawyer who is acting/appearing on the basis of the limited scope designation. **Rule 28.04 (11)-(13)**

## **Part V: Bail Variations pursuant to s. 519.1 of the Code**

(a) This part applies to consent applications under s. 519.1 of the *Code* to vary release orders issued under ss. 499, 503 or 515 of the *Code*.

(b) Where the applicant has been committed for trial in the SCJ, all applications under s. 519.1 must be brought in the Superior Court.

(c) Where an application to vary a release order on consent under s. 519.1 of the *Code*, without a court attendance, is filed, the reviewing judge may

- i. grant the order;
- ii. direct that a court attendance is required, including a direction that the application proceed as an application under s. 520 or s. 521 of the *Code*; or
- iii. give other directions regarding the application.

(d) All applications under s. 519.1 of the *Code*, seeking an order without a court attendance, shall include:

- a. a notice of application clearly identifying the content of the term(s) sought to be varied and supported by the following:
  - (i) a copy of the release order that the applicant wants varied, including all previous variations of the release order;
  - (ii) a sworn affidavit from the applicant confirming that the applicant understands that the original release order remains in effect and that failure without lawful excuse to comply with that release order as it has been varied is an offence contrary to the *Code*; and

(iii) a sworn affidavit from each surety that includes (1) the surety's position with respect to the variation(s) being sought and (2) that the surety agrees to be bound by the order as varied and understands that if the order is varied that the surety is bound by it;

or

b. a completed **Form 10B** with a copy of the release order that the applicant wants varied.

(e) Where a judge grants a variation under s. 519.1, the Form 10B signed by the judge or, where the Form 10B is not used, the order or endorsement of the judge granting the variation, together with the original (now varied) release order, are the release orders.

## **Part VI: Applications under s. 11(b) of the Canadian Charter of Rights and Freedoms**

### **A. Scheduling of s. 11(b) Applications Pre-trial Conference**

Where the defence (an accused person or their counsel) intends to bring a s. 11(b) application but did not indicate this at the pre-trial conference, the defence must provide written notice of this change in position to the Crown, any other accused and the Superior Court trial coordinator, and arrange for a further pre-trial conference as soon as practicable, as required under **Rule 28.04(11)**.

As set out in the **Court's Guidelines to Determine Mode of Proceeding in Criminal**, all judicial pre-trials will be held virtually unless the Court directs otherwise.

The pre-trial conference judge will inquire about and discuss any matter that may promote a fair and expeditious hearing of the s. 11(b) application including, but not limited to,

(i) the scheduling of the application;

(ii) the parties' positions as to the cause of any particular periods of delay in the case, including whether the delay is attributable to the defence or to "extraordinary circumstances", as defined in *R. v. Jordan*, and



(iii) the materials required to be filed in support of the application.

## **B. Timing for service & filing of s.11(b) application**

Unless otherwise directed by the Court, all s. 11(b) applications must be scheduled to be heard at least 60 days before the first scheduled day of trial or, where pre-trial applications are scheduled to be heard separately in advance of the trial, at least 60 days before the first scheduled day of pre-trial applications.

Before filing a s. 11(b) application, the applicant must obtain a hearing date from the court. Before seeking this date from the court, the applicant will be expected to consult with the Crown and any other accused to canvass all parties' available dates and a reasonable time estimate for the hearing of the application.

Unless otherwise directed by the Court, the materials in support of the application must be served and filed in accordance with the timelines set out in Rules 27.04 and 33:

(i) the applicant's materials must be filed at least 30 days before the hearing of the application; and

(ii) the respondent's materials must be filed at least 10 days before the hearing of the application.

## **C. Supporting Materials Required in s. 11(b) Applications Factums**

Unless otherwise directed by the Court, factums are required for all s. 11(b) applications, as per [Rule 27.05\(8\)](#).

The factums should clearly identify any periods of delay within the case that the party submits should be characterized as attributable to the defence or to "exceptional circumstances", as defined in *R. v. Jordan*.

The information describing periods of delay **must** be set out in a chart (or charts) attached to the factum setting out the history of the proceeding from the date of charge until the anticipated disposition of the proceeding.

#### **D. Transcripts required**

Unless otherwise directed by the Court and subject to paragraph 64 below, the applicant's application record must contain the transcripts of all prior court appearances in the case. Where an appearance included the hearing of evidence and submissions, only the portion of the transcript reflecting discussions about adjournments, scheduling and selection of the next court need be provided.

#### **E. Agreement on periods of delay**

The court encourages and expects the parties to work together to identify any periods of delay within the case that all parties agree are attributable to the defence or to "exceptional circumstances", as defined in *R. v. Jordan*. Where the parties reach such an agreement, an agreed statement of fact may be filed with respect to that period, rather than transcripts.

#### **F. Time limits at the hearing of s. 11(b) application**

Unless directed otherwise by the Court, delay applications shall be scheduled for up to 90 minutes allocated as follows:

- Applicant – 40 minutes
- Respondent – 40 minutes
- Applicant's reply – 10 minutes

### **Part VII: Media Notification After Jury Sequestered**

## **A. Purpose of this Part**

The purpose of this Part is to support the open courts principle by ensuring there is a process in place in every centre for giving reasonable notification to the media of court reconvening after a jury is sequestered, while ensuring the presiding judge's control over proceedings.

## **B. Interpretation and Application of this Part**

Each centre of the Superior Court of Justice of Ontario, will have in place a practice that requires the Registrar or other Court Services Division representative, to notify, upon request of the media, one media representative (who agrees to notify other interested members of the media) when court is reconvening after the jury has been sequestered. Additional members of the media may be notified at the direction of the presiding judge.

Each court centre will have in place, at a minimum, a process whereby at least one media representative may make a request to the Registrar to be notified. Upon receiving this request, Registrar (or other designated court staff) will

- a. Notify the media representative(s) when court is reconvening, and when jury deliberations have concluded for the day. Notification of other developments such as meal breaks may be given at the discretion of the presiding judge or pursuant to local practice.
- b. Ensure that a process is in place to allow for the media representative(s) to be contacted by any form of communication that is reasonably available to the parties and court staff and acceptable to the presiding judge.
- c. Ensure that staff do not, under any circumstances, discuss or divulge information regarding the case and/or make comment on why court is reconvening, including advising that there is a verdict or question.

While this Part requires that court staff notify media of major developments in jury proceedings, the court will not wait for media representatives to arrive before reconvening.

Beyond the notification in this Part, court staff should not notify additional persons other than Crown counsel, defence counsel, the accused, court security, and court interpreter (if required), unless ordered to do so by the presiding judge or as pre-authorized by local practice directive.

Court staff are required to ask the presiding judge for direction, if a request is received to contact any other person.

## **PART VIII: MODE OF PROCEEDING: Guidelines to Determine Mode of Proceeding in Criminal**

The following guidelines to determine the mode of proceedings apply to all Criminal matters. Please see **Regional Notices** for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

### **1. Over-arching principles in the application of the presumptive guidelines**

These guidelines set out presumptive methods of attendance for events in the SCJ. In applying these guidelines, the Court will take into account the following general principles:

#### **(i) Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of parties (e.g. self-represented litigants) and access to technology (including virtual capacity at institutions and courthouses).

#### **(ii) Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

**(iii) Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

**(iv) In-person hearings important:**

While the continued use of virtual proceedings increases efficiency at many stages in the litigation process, the Court also recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.

**(v) Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

#### **(vi) Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

#### **Terms used in the guidelines:**

- "Virtual" = proceedings using a platform like Zoom video or audioconference or by teleconference.
- "Hybrid" = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.
- "In-person" = all parties, counsel and the judge are physically in the courtroom.
- "Videoconference or audioconference" = connecting into a proceeding using a platform like Zoom through video and audio or audio only.
- "Teleconference" = connecting into a proceeding via a telephone number to a landline.

## **2. Presumptive guidelines to determine mode of proceeding in criminal matters**

#### **(i) Assignment court:**

Assignment court appearances will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court specifies a different method of attendance. In deciding whether any assignment court appearance will be conducted other than virtually, the Court will take into account whether the accused is self-represented (either in custody or out of custody) and any other factor bearing on the administration of justice, including any access to justice issues.

#### **(ii) Bail hearings, bail reviews and detention reviews:**

##### **(a) Bail hearings:**

All bail hearings will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

**(b) Bail reviews and detention reviews:**

All bail reviews and 90-day detention reviews will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

**(iii) Judicial pre-trials:**

All judicial pre-trials will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court directs that an in-person judicial pre-trial is required in light of the accused being self-represented, there being multiple accused in a case, the complexity of trial issues, the length of the trial, or any other factor the Court decides warrants an in-person judicial pre-trial.

**(iv) Pre-trial motions:**

All pre-trial motions will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(v) Judge-alone trials:**

All judge-alone trials will be held in person unless both the accused and Crown consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid

proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(vi) Jury trials:**

All jury trials will be held in person. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(vii) Guilty pleas:**

All guilty pleas will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

**(viii) Sentencing hearings:**

All sentencing hearings will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

**(ix) Summary conviction appeals and special motions:**

**(a) Assignment court (in jurisdictions where these are held):**

All assignment court appearances related to summary conviction appeals and special motions will be held virtually (either by video or audioconference or in some jurisdictions by teleconference), with the exception of self-represented litigants, unless the Court specifies a different method of attendance.

**(b) Hearing of the motion:**

All summary conviction appeals will be held virtually subject to the discretion of the Court, which will take into account: whether the accused is self-represented, the



position(s) of the parties, and any other factor bearing on the administration of justice. Where one of the parties requests another mode of appearance, they can do so at a case management conference or they can request a case management conference for this purpose.

## **Part IX: General Provisions**

### **A. Communicating with Court, Staff and Trial Coordinators**

Counsel and self-represented persons shall not communicate directly with a judge unless the court directs otherwise. Instead, they may communicate with the court filing and trial coordination offices by email . The **Regional Notice** will indicate the appropriate email contact information.

When communicating by email with court filing and trial coordination offices, counsel and self-represented parties must:

**(i) Include the following information in the subject line:**

- Level of court (SCJ)
- Type of matter (criminal)
- File number (indicate new if no court file number exists)
- Originating court location
- Type of document (e.g., motion, JPT form, other request)
- Style of cause
- Date of event

**(ii) Include in the body of the email the following information if applicable:**

- Court file number (if it is an existing file)
- Style of cause
- Date of event
- Short title of proceeding
- List of documents attached
- Type of request
- Name, role (i.e. lawyer, representative, party, etc.,) and contact information of person submitting the request (email and phone number)
- All parties should be copied on emails sent to the court.

## **B. Gowning for Counsel**

Counsel must be gowned for any virtual proceeding that, if conducted in person, would require gowning. Counsel should consult **Region-specific Notices** for specific direction on what matters do not require gowning.

### ***Attire modifications***

Counsel with personal circumstances, including pregnancy, a medical condition or disability, may modify their traditional court attire in order to accommodate their personal circumstances as they see fit, including dispensing with a waistcoat and tabs. Modified attire must be both dark in colour and in keeping with court decorum.

Counsel wearing modified attire are requested to advise the court registrar before the opening of court that they are wearing such attire in accordance with this Practice Direction. This is to ensure that counsel do not need to discuss their personal circumstances or modified attire on the record or in open court.

## **C. Electronic Devices in the Courtroom**

This section outlines the protocol on how electronic devices may be used in courtrooms of the Ontario Superior Court of Justice by counsel, licensed paralegals, law students and law clerks assisting counsel, self-represented litigants, and media or journalists. Note: This section does not apply to persons who require electronic devices (or services requiring the use of electronic devices) to accommodate a disability.

### **1. Definitions**

**Electronic Devices:** For the purposes of this section, “electronic devices” include all forms of computers, personal electronic and digital devices, and cell phones.

**Publicly Accessible Live Communications:** For the purposes of this section, “publicly accessible live communications” are defined as the act of using an electronic device to transmit information from the courtroom to a publicly accessible medium (e.g. via Twitter or live blogs).

## 2. Prohibited Use of Electronic Devices by the Public

Members of the public are not permitted to use electronic devices in the courtroom unless the presiding judge orders otherwise.

## 3. Use of Electronic Devices in the Courtroom

Unless the presiding judge orders otherwise, the use of tablets and laptop computers and other electronic devices used in silent mode and in a discreet and unobtrusive manner is permitted in the courtroom for the purposes of the court proceeding, by

- a. counsel;
- b. paralegals who are licensed by the Law Society of Ontario;
- c. law students and law clerks assisting counsel during the proceeding;
- d. self-represented parties; and,
- e. media or journalists

subject to the following restrictions:

- (i) The electronic device cannot interfere with courtroom decorum or otherwise interfere with the proper administration of justice.
- (ii) The electronic device cannot interfere with the court recording equipment or other technology in the courtroom.
- (iii) The electronic device cannot be used to send publicly accessible live communications where to do so would breach a restriction on publication made in the proceeding.
- (iv) The electronic device cannot be used to take photographs or videos unless the judge has granted permission to do so, in accordance with s. 136 of the *Courts of Justice Act*.
- (v) Counsel, parties, the media, and journalists must seek leave of the court for permission to audio record a proceeding. Any audio recording that has been approved by the court is for the sole purpose of supplementing or replacing handwritten notes
- (vi) Talking on electronic devices or sending private communications is not permitted in the courtroom.

## **4. Enforcement**

Anyone who uses an electronic device in a manner that is inconsistent with this section, any orders of the presiding judge or that the presiding judge determines to be unacceptable may be:

- a. subject to prosecution for breaches of s. 136 of the *Courts of Justice Act*, a citation and prosecution for contempt of court, or prosecution for other offences;
- b. ordered to turn off the device;
- c. ordered to leave the device outside the courtroom;
- d. ordered to leave the courtroom; and/or
- e. ordered to abide by any other order the presiding judge may make.

## **D. Publication Bans**

### **1. Application of this Part**

This part applies to all applications or motions for discretionary publication bans. It does not apply to publication bans that are mandated by statute (i.e. those that either operate automatically by virtue of statute or that a statute provides are mandatory on request).

### **2. Formal Notice of Application/Motion Required**

Unless otherwise directed by the court, any person seeking a discretionary order restricting publication of any Superior Court proceeding must serve and file a notice of motion or application and any supporting materials, in accordance with the applicable procedural rules.

### **3. Notification of the Media**

Unless otherwise directed by the court, the person seeking the publication ban (the requesting party) must provide notice to the media of the motion/application, using the procedure set out in this section.

The requesting party must complete and submit the **“Notice of Request for Publication Ban”** form available on the Superior Court of Justice website.

The notice period for submitting a Notice of Request for a Publication Ban is the same as the notice period under the **Rules** required for serving and filing of a **Notice of Application**.

The information on the Notice of Request for Publication Ban will be distributed electronically to members of the media who have subscribed to receive notice of all publication ban applications/motions in the Superior Court.

Any member of the media who wishes to receive copies of the Notices prepared and submitted under this section should **submit a request** through the Superior Court of Justice website.

The requesting party may be required to produce a copy of the Notice of Request for Publication Ban to the Court at the hearing of the application/motion in order to establish that notice was provided in accordance with this section.

## **E. Virtual Hearings**

### **1. Preparing for Your Virtual hearing**

To ensure the virtual hearing runs smoothly, please see the Court’s guidance to help you prepare for the hearing, (including by testing your internet connectivity and having a charger available during the hearing)

All participants and members of the public who attend a virtual court proceeding must conduct themselves as if they were physically in the courtroom. All individuals participating in virtual court proceedings must continue to observe the well-established rules of court decorum which can be found here: **Virtual Courtroom Etiquette Rules**

## **2. Public and Media Access to SCJ Virtual Hearings**

The SCJ remains committed to the open court principle regardless of whether the hearing is conducted virtually or in-person.

Any member of the public who wishes to hear/observe a public, virtual proceeding may email their request to the local courthouse staff in advance of the hearing. The person requesting access should advise of the hearing they wish to hear/observe, and their contact information.

Every effort will be made to provide the requestor with information on how they may hear/observe the proceeding, however, the request may be reviewed by the court. Additionally, certain proceedings are closed to the media and public by legislation or court order.

## **3. Recording and other illegal conduct during a virtual hearing**

Participants and observers shall not record, take photos, screen capture, or broadcast any part of a Court proceeding unless it is expressly authorized by the presiding judicial official. It is an offence under section 136 of the *Courts of Justice Act* and you may also be charged with an offence under the Criminal Code, if you record, photograph, screen capture, publish, broadcast (or live stream) any part of a court proceeding without the express permission of the presiding judicial official.

Other conduct during a virtual court hearing may be an offence under the *Criminal Code* or may constitute contempt of court, for example, racist comments or threats to harm a person or justice participant.

## **4. Virtual Hearing Etiquette to improve quality of court recording and transcript**

Please consult Court Services Division's *etiquette tip sheets* to ensure quality and accuracy of the court recording and transcript.

## **F. Release of Digital Court Recordings**

This section outlines the policy on the release of digital court recordings. Members of the public, counsel, litigants, accused or the media may obtain copies of digital court recordings (hereinafter referred to as “digital recordings”) made from Digital Recording Devices (DRDs) of matters heard in open court, in accordance with the requirements of this section. The copies of digital court recordings will include annotations.

The release of digital recordings will be at the court’s discretion and the use of all digital recordings will be subject to any court order and any common law or statutory restriction on publication applicable to the particular proceeding.

Unless this section provides otherwise, all persons must execute an undertaking with the court to access the digital recordings. The undertaking prescribes the way in which the digital recording is to be used and the terms and conditions under which the digital recording is being provided. All digital recordings are subject to the prohibition set out in s. 136 of the *Courts of Justice Act*, which prohibits the broadcast, reproduction and dissemination of audio recordings. Any person who contravenes s. 136 is guilty of an offence and subject to a penalty, in accordance with s. 136(4) of the *Courts of Justice Act*.

### **Restrictions on Access to Digital Recordings from DRDs**

All copies or access to digital recordings are subject to any express order the presiding judge may make. The presiding judge may expand or restrict access to the digital recordings in any particular proceeding before him or her.

Unless a judge of the Superior Court of Justice orders otherwise, no digital recordings are available to anyone in the following proceedings:

- a. in camera proceedings or any portion of a proceeding that is heard in camera;
- b. proceedings subject to a statutory, common law or court ordered restriction on the provision of transcripts or digital recordings of the proceeding (e.g., pre-trial conferences held in court with self-represented accused, pursuant to **rule 28.05(4)** of the *Rules*, proceedings under the Youth Criminal Justice Act)

### **Access to Digital Recordings from DRDs**

## **Counsel of Record**

A counsel of record in a proceeding may obtain the digital recordings of that proceeding upon completion of the “Undertaking of Counsel/Licensed Paralegal of Record” and payment of the prescribed fee.

Persons attending on behalf of counsel of record may obtain the digital recording if he or she: (i) provides a signed undertaking from counsel of record; (ii) signs the authorization included in the “Undertaking of Counsel/Licensed Paralegal of Record”; and (iii) pays the prescribed fee.

## **Litigant or Accused**

A litigant or accused in a proceeding may obtain the digital recordings of that proceeding upon completion of the “Undertaking to the Court for Access to Digital Court Recordings” and payment of the prescribed fee.

## **The Media**

Members of the media, identified on the “Joint Courts’ List of Designated Media for Access to Digital Court Recordings” accessible on the Superior Court of Justice website: [www.ontariocourts.ca/en/media-list.htm](http://www.ontariocourts.ca/en/media-list.htm), may obtain the digital recordings upon completion of the “Undertaking to the Court for Access to Digital Court Recordings” and payment of the prescribed fee.

Members of the media who are not identified on the “Joint Courts’ List of Designated Media for Access to Digital Court Recordings” may make an application for an order in accordance with this section authorizing him or her to obtain access to the digital recordings of the proceeding.

The applicant may obtain the digital recordings if he or she: (i) obtains a court order authorizing access, (ii) completes “Undertaking to the Court for Access to Digital Court Recordings”, and (iii) pays the prescribed fee.

## **Members of the Public**

Members of the public may make an application for an order in accordance with this section authorizing him or her to obtain access to the digital recordings of the proceeding.



The applicant may obtain the digital recording if he or she: (i) obtains a court order authorizing access, (ii) completes the “Undertaking to the Court for Access to Digital Court Recordings”, and (iii) pays the prescribed fee.

### **Presiding Judge, Regional Senior Judge (RSJ) or Local Administrative Judge (LAJ)**

Copies or access to digital recordings shall be provided, upon request, to the presiding judge for the proceeding in which the digital recording was prepared.

Copies or access to digital recordings shall be provided, upon request, to the RSJ or LAJ (or his or her designate), for administrative purposes, in the absence of the presiding judge. The presiding judge will be notified that access or copies of the digital recording were made available to the RSJ or LAJ (or his or her designate).

Where a judge wishes to access a digital recording from a proceeding in which another judge presided, the judge shall obtain the consent of the presiding judge to access the digital recording, subject to the following paragraph.

Where a judge determines that he or she can deal more effectively and efficiently with a case by accessing a digital recording from a previous proceeding before another judge, in the same case or a related case, the judge can access the digital recording by obtaining permission from the presiding judge, the RSJ, the LAJ, or his or her designate, unless it is in the interests of justice to dispense with such permission. In that event, access to the digital recording shall be provided to the judge upon request. After access is provided, the judge who has obtained access shall notify the judge who presided at the earlier proceeding, if that judge was not notified when the issues arose.

### **Court Services Division Staff and Transcriptionists**

Copies or access to digital recordings shall be provided upon request at no charge to the following:

- a. Court Services Division Staff who require access in the course of their employment responsibilities; and,
- b. Transcriptionists authorized by Regulation 158/03 under the *Evidence Act* who require access to transcribe court proceedings and who have signed an “Undertaking of Authorized Court Transcriptionist for Access to Audio Court Recordings”.

### **Named Administrative Bodies or Organizations**

Representatives of the bodies or organizations authorized pursuant to a Memorandum of Understanding with the Ministry of Attorney General to have access to digital audio recordings may obtain digital court recordings of court proceedings related directly to the matters under consideration by these bodies or organizations, upon completion of an Undertaking approved by the court and prescribed by the Memorandum of Understanding.

### **Hearing of the Application**

Applications regarding access to the digital recording for any ongoing proceeding will be heard by the judge who is seized of the proceeding.

Applications shall be brought in accordance with the procedural rules that govern the court proceeding.

Applications regarding access to the digital recording for any other type of proceeding or for a proceeding that has concluded will be heard by the judge who presided at the hearing.

Where the judge who presided at the hearing is not available to hear the application or where no particular judge is associated with the proceeding, the RSJ, LAJ (or his or her delegate) may hear the application. Applicants should be aware that, especially for proceedings that have concluded or proceedings adjourned for a lengthy period of time, it may not always be possible to schedule an application before the appropriate judge on short notice because a judge may have many ongoing obligations in other proceedings.

### **G. Ensuring the Integrity of Scheduled Trials, Hearing and Appeals**

This section is intended to ensure that trials, hearings and appeals are scheduled on the basis of the chronological order in which lawyers make their commitments to appear in court. It has three important objectives:

- (i) to ensure that the trial lists of the SCJ are respected;
- (ii) to reduce court delays, the waste of court resources and the unnecessary expense and inconvenience to the public brought about by adjournments; and
- (iii) to assist parties in having adequate representation by a lawyer acceptable to them.

## **1. Trial Dates**

Where a date for trial or for the hearing of a matter has been set by the Superior Court of Justice or the Ontario Court of Justice, the trial or hearing is expected to take place on that date.

## **2. Presumption of Commitment**

By agreeing to a trial or hearing date, a lawyer is presumed to have made a commitment to appear on that date and to be bound not to make any other commitments that would make the lawyer's appearance on that date impossible.

## **3. Duty to Inform of Previous Commitments**

When setting a date for trials, hearings or appeals in the Superior Court of Justice or the Ontario Court of Justice, every lawyer has a duty to disclose previous commitments to another court that may conflict with a proposed date for a trial, hearing or appeal.

## **H. Reserved Decisions**

If a judge does not release a decision or endorsement within the timeframe provided by the judicial officer or as required under the **Courts of Justice Act**, and if the parties have not been advised that an extension of time has been granted by the Regional Senior Judge or Chief Justice, counsel or parties should make reasonable inquiries with the appropriate court office. If, after reasonable inquiries, the decision is still not released and no extension or explanation has been provided, counsel or the party (if self-represented) are advised to write to the Regional Senior Judge.