

COVID-19: Waiver of Personal Attendance and Request for Adjournment / Remand by Accused Persons in Custody

The following Practice Direction is issued under rules 4.5 and 5 of the Criminal Rules of the Ontario Court of Justice.

Introduction

- 1) This practice direction applies to appearances before the Ontario Court of Justice on or after Monday August 17, 2020.
- 2) Accused persons who are in custody may waive their right to appear personally before the Court and request to have their matter adjourned in their absence, by instructing defence counsel to complete and file a “Waiver and Request for Adjournment / Remand in Accused Person’s Absence” form (the Form) on their behalf.
- 3) Where the Form is filed, the accused person’s matter may be adjourned by the Court without the accused person personally appearing in court, in accordance with rule 4.5 of the Criminal Rules of the Ontario Court of Justice.
- 4) In adjourning an accused person’s matter under this Practice Direction, the Court may also address and sign a Warrant of Remand, authorizing the accused person’s continued detention until the next court date, in the accused person’s absence.

Application and Interpretation

- 5) Unless a judicial official orders otherwise, the procedure in this Practice Direction applies only to case management appearances; it does not apply to accused persons who are scheduled to appear in connection with a bail hearing or for a scheduled trial, guilty plea, preliminary inquiry or sentencing.
- 6) In this Practice Direction,
 - “accused person” includes a young person as defined in the *Youth Criminal Justice Act*; and
 - “defence counsel” includes duty counsel and agents authorized under sections 800(2) and 802.1 of the *Criminal Code*

Waiver by Accused Person

- 7) In submitting the Form through defence counsel, the accused person is
 - waiving their right to appear before the Court, whether in person, by videoconference or by audioconference;
 - consenting to their matter being addressed and adjourned on their behalf and in their absence;
 - acknowledging that they will remain in custody until their next appearance, unless they are able to satisfy the terms of a release previously ordered by a court or otherwise ordered released, for example, on a detention review or a bail review application; and

- agreeing the court will continue to have jurisdiction over them even though the matter was addressed and adjourned in their absence..
- 8) In addition, an accused person who is entitled to a bail hearing before the Ontario Court of Justice but has not yet had a bail hearing, is
- acknowledging that a Warrant of Remand authorizing their detention until their next court appearance will be addressed and signed in their absence; and
 - waiving their right to be present when the Warrant of Remand is addressed.

Completion and Submission of the Form

- 9) Because it may not be feasible for accused persons who are in custody to complete the form, the form can be completed and submitted by defence counsel based upon instructions from the accused person.
- 10) The Form should be emailed to the Court and to the correctional facility where the accused person is in custody, with a copy to the Crown, no later than 9 am the day before the scheduled court appearance. This timeline can be shorted at the direction of a judicial official.
- 11) The subject of the email should indicate the word “IN-CUSTODY WAIVER”, the name of the accused person and the next court date, e.g. “IN-CUSTODY WAIVER, John DOE, September 1, 2020”. Where the accused person is a young person, the subject of the email should indicate YCJA and the initials of the young person, rather than their full name, e.g. “IN-CUSTODY WAIVER (YCJA), J.D., September 1, 2020”. The body of the email should contain the full name and date of birth of the accused person, the name of the correctional facility where the accused person is detained, details regarding the next court appearance (date, time, courtroom, courthouse) and defence counsel’s name, contact information and email address.
- 12) The Form will be filed with the Court and form part of the court record.

Addressing and Adjourning the Accused Person’s Matter

- 13) There are two ways in which the accused person’s matter may be addressed and adjourned using the Form.
- (i) Defence counsel addressing the matter in the absence of the accused person**
- 14) Defence counsel may appear, either personally or by agent, and address the Court on behalf of the accused person. The appearance may be either in person or using remote technology. After hearing from defence counsel and the Crown, the Court may adjourn the matter without the accused personally appearing in court.
- (ii) Consent adjournments in the absence of defence counsel and the accused person**
- 15) If the Crown and defence are proposing a consent adjournment, the accused person’s matter may be addressed and adjourned by the Court without the accused person or defence counsel being present. This procedure only applies to consent adjournments, in which defence counsel and the Crown agree on the proposed next court appearance date and the reason for adjournment.

- 16) The Court may adjourn the matter, on consent, to the date proposed on the Form, without the accused personally appearing in court.
- 17) Where the Court is of the opinion there is a technical defect in the Form or an issue with the proposed adjournment, the Court may address the matter in the manner it considers fair and appropriate in the circumstances, including adjourning the matter to a different date, without the accused personally appearing in court. The Crown will advise defence counsel of the issue with the Form and the details regarding the next appearance.