

Enhanced Designations of Counsel - Frequently Asked Questions

On August 6, 2020, the Ontario Court of Justice issued a Practice Direction authorizing the use of an Enhanced Designation: see [COVID-19: Practice Direction Authorizing Alternate Form of Appearance where an Enhanced Designation of Counsel has been Filed](#). Accused persons who are represented by counsel and who have filed an Enhanced Designation of Counsel may have their matters adjourned, without the accused or their counsel personally appearing, in accordance with the procedure set out in the Practice Direction and in accordance with rule 4.5 of the [Criminal Rules of the Ontario Court of Justice](#).

In response to some questions and feedback, the Court has prepared this set of Frequently Asked Questions to assist all justice partners, including Crown and defence counsel and court staff, in using and working with Enhanced Designations of Counsel.

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GENERAL OVERVIEW OF THE ENHANCED DESIGNATION OF COUNSEL

1. What are the most significant differences between the Enhanced Designation of Counsel and a “regular” designation of counsel?

When an Enhanced Designation has been filed:

- 1) neither counsel nor the accused person needs to attend court for the appearance after the designation has been filed, nor do they need to attend court to file the designation. The accused person’s matter will be adjourned in the accused person’s absence;
- 2) upon filing of the designation, the accused person’s matter is adjourned for 12 weeks during which the Crown and defence counsel are obligated to take steps to move the case toward completion of the intake phase of the case.

2. What is the purpose of the Enhanced Designation of Counsel?

The Enhanced Designation benefits the Court and all parties by reducing the need for multiple case management appearances which result in lengthy dockets in case management (set date) courts.

The Enhanced Designation requires counsel – both the Crown and the defence – to take meaningful steps to move cases forward during the intake phase of the case. Rather than granting a series of short-term adjournments to confirm completion of interim steps, the Enhanced Designation establishes a standard, 12-week adjournment during which Crown and defence counsel are expected to take the necessary steps toward completion of the intake phase of the case. See Practice Direction, preamble.

The Enhanced Designation was designed and implemented based on the input from a committee that included representatives from the Crowns (both provincial and federal), the Defence Bar, Legal Aid Ontario and Court Services Division.

3. What are the requirements of an Enhanced Designation of Counsel?

Paragraphs 5 - 10 of the Practice Direction set out the requirements of an Enhanced Designation of Counsel:

- The accused must acknowledge
 - they have provided current contact information to their counsel and agree to keep up to date
 - that the matter will be adjourned in their absence and specifically agree that the court will continue to have jurisdiction over them
 - they will attend court if the retainer is terminated
- Counsel must agree to bring the matter before the Court if the retainer is terminated during the adjournment period.

- The Designation must also set out the accused person’s upcoming court appearance and the date that the accused person’s case will be adjourned to (i.e. a date approximately 12 weeks later from the next scheduled appearance).
- Both the accused and the designated counsel must sign the designation, as required by s. 650.01 of the *Criminal Code*. Note: electronic signatures are acceptable (Practice Direction, para. 10).

The Court has prepared a [sample Enhanced Designation of Counsel](#) that counsel may use. Alternatively, counsel may prepare their own version of the Enhanced Designation, as long as it fulfills the requirements of the Practice Direction.

4. Does the Information number need to be listed on the Enhanced Designation?

No. The Information number does not need to be listed on the Enhanced Designation. However, if counsel knows the Information number, it would be very helpful for counsel to include it on the Enhanced Designation and in the cover email when they send it to the Court.

Counsel must include enough information on the Designation and in the covering email to allow court staff to identify and locate the Information(s) to which the Designation applies. That includes the following:

- the accused person’s full name
- the accused person’s date of birth
- next court date
- the offences with which the accused is charged (including the section number of the *Criminal Code*, *CDSA* or other statute)
- the offence date.

Where an accused person has more than one Information before the court, it is particularly important the designation and covering email specify to which Information(s) the Designation applies. This can be done either by providing the Information number(s) or by specifying the offences and offence dates. See Practice Direction, paras. 5 – 9 and 17.

5. How does defence counsel file the Enhanced Designation?

Defence counsel must email the Enhanced Designation of Counsel to the Crown and to the Court no later than three (3) business days before the next scheduled court date. See: [List of Courthouse Email Addresses](#) and [Provincial and Federal Crown Attorney Offices Contact Information](#).)

The subject of the email should indicate the word “Designation”, the name of the accused person and the next court date, e.g. “DESIGNATION, 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. “DESIGNATION (YCJA), J.D., September 1, 2020”. The body of the email should contain the full name and date of birth of the accused person, details regarding the next court appearance (date, time, courtroom, courthouse) and defence counsel’s name, contact information and email address.

See Practice Direction, para. 17.

6. Can an Enhanced Designation be filed even if the case has been before the court for some time and some intake phase steps have already been completed?

Yes. The Practice Direction encourages accused persons to file Enhanced Designations of Counsel even though some of the steps toward completion of the case management / intake phase have already been completed. In such circumstances, counsel are expected to make best efforts to complete the case management / intake phase at the earliest reasonable opportunity, rather than necessarily using the full 12-week adjournment period to do so. In addition, if the intake phase is completed before the 12-week adjournment period is over, counsel are expected to move the case forward, by either selecting a trial or preliminary inquiry date through the trial coordinator's office or by bringing the matter forward, See Practice Direction, paras. 23 – 24.

7. Can an Enhanced Designation be filed in a case involving multiple accused?

Yes. Counsel can file an Enhanced Designation in a case involving multiple accused, even if the other accused has not yet retained counsel or the co-accused's counsel has not filed an Enhanced Designation. See Practice Direction, paras. 32 – 33.

Upon filing of the Enhanced Designation, that accused person's matter will be adjourned for the standard 12-week adjournment, unless the judicial official orders otherwise.

Crown and defence counsel are expected to work cooperatively with one another, and with any unrepresented accused person, to move the matter forward, such as coordinating scheduling judicial pre-trials and selecting trial or preliminary inquiry dates. This is particularly important if one or more co-accused is in custody.

8. Can an Enhanced Designation be filed by a paralegal who is authorized to represent an accused person on a criminal matter?

Yes. Paralegals who are authorized to represent an accused person on a summary conviction offence under ss. 800 and 802.1 of the *Criminal Code* may file an "enhanced appointment of authorized agent for summary conviction matters", by adapting and completing the Enhanced Designation of Counsel. See Practice Direction, paras. 34 – 35.

9. What is a limited retainer designation?

A limited retainer designation specifies that counsel is only retained to represent the accused through the case management / intake phase, i.e. up to the setting of a trial or preliminary inquiry date. Where a limited retainer designation is filed, defence counsel does not need to apply to be removed from the court record at the end of the case management / intake phase and, unless defence counsel expressly agrees otherwise, any trial or preliminary inquiry scheduled where a limited designation of counsel is filed is deemed to be set on a "with or without counsel" basis.

The Practice Direction provides that any designation – either a regular designation or an Enhanced Designation of Counsel – can contain this limited retainer provision-

The limited retainer designation of counsel must include an acknowledgement by the accused person that they understand the limited retainer and they will be required to attend court when a trial date is being set. The title of the designation must also clearly indicate that it is a limited retainer designation.

See Practice Direction, paras. 11 – 14.

ADDRESSING ENHANCED DESIGNATIONS OF COUNSEL IN COURT

10. Does the accused person or counsel need to attend court if an Enhanced Designation has been filed?

No. Where an Enhanced Designation has been filed, the accused person's matter is adjourned, without the accused or their counsel appearing, in accordance with the procedure set out in the Practice Direction and in accordance with Rule 4.5 of the Criminal Rules of the Ontario Court of Justice (see Practice Direction, para. 15).

11. What happens if there is a problem with the Enhanced Designation that has been filed?

Defence counsel is required to send a copy of the Enhanced Designation to the Crown at least three days before the scheduled court appearance. The Crown is expected to review the Enhanced Designation in advance of the court appearance.

If the Crown takes the position the Enhanced Designation of Counsel does not comply with the requirements of this Practice Direction, the Crown is expected to contact defence counsel and advise of their position in advance of the court appearance. This will allow defence counsel an opportunity to remedy any technical defect prior to the court appearance or, if appropriate, to attend court to make submissions regarding the validity of the Designation.

If the Crown takes the position the Enhanced Designation does not comply with the requirements of this Practice Direction, the Crown may advise the presiding judicial official when the accused's matters is addressed.

(i) Where the judicial official is satisfied that the Enhanced Designation is valid

If the presiding judicial official is satisfied the Enhanced Designation of Counsel complies with the requirements of this Practice Direction, the case will be adjourned to the date identified on the designation without the accused personally appearing in court.

See Practice Direction, paras. 18 – 22

(ii) Where there is a problem with the adjournment date identified on the Designation

Where the presiding judicial official is satisfied the Enhanced Designation of Counsel otherwise complies with the requirements of this Notice but there is a problem with the adjournment date identified on the designation (for example, the date falls on a statutory

holiday or does not fall on the appropriate case management date), the case should be adjourned to an appropriate date without the accused personally appearing in court. The Crown is expected to advise defence counsel of the revised adjournment date.

See Practice Direction, para. 21.

(iii) Where the Enhanced Designation of Counsel may not comply with the requirements of the Practice Direction

Where the presiding judicial official is of the opinion the Enhanced Designation of Counsel may not comply with the requirements of the Practice Direction, the presiding judicial official should adjourn the matter for approximately one to two weeks with a bench warrant with discretion. The Crown is expected to contact defence counsel and advise about the problem and the next court date so the issue can be addressed on or before the next court appearance. If the issue regarding the Enhanced Designation is resolved before the next court appearance and a valid Enhanced Designation is before the Court, the bench warrant with discretion will be deemed executed at the next court appearance and the case will be adjourned to the date identified on the designation without the accused or counsel personally appearing in court.

See Practice Direction, para. 22.

12. Does the 12-week adjournment set out in the Practice Direction apply to every case?

The Practice Direction states that, upon filing of an Enhanced Designation of Counsel, the accused person's matter will be adjourned, in the accused person's absence, to the date 12 weeks away, which is set out in the Enhanced Designation. See Practice Direction, paras. 15 - 16 Note: For cases in which an appearance 12 weeks away would not fall on the appropriate case management date, see "[What about cases in which an appearance 12 weeks away would not fall on the appropriate case management date?](#)" below.

The Practice Direction encourages defence counsel to file Enhanced Designations of Counsel even though some of the steps in the case management / intake phase have already been completed. Such cases are still subject to the standard 12-week adjournment. The Practice Direction states that, in such circumstances, counsel are expected to make best efforts to complete the case management / intake phase at the earliest reasonable opportunity, rather than necessarily using the full 12-week adjournment period to do so. See Practice Direction, para. 23.

The Practice Direction provides that if the case management / intake phase is completed before the 12-week adjournment period is over, counsel are expected to move the case forward, by either selecting a trial or preliminary inquiry date through the Trial Coordinator's office or by bringing the matter forward. See Practice Direction, para. 24.

The standard 12-week adjournment is an important feature of the Enhanced Designation procedure as it provides consistency, transparency and certainty. This is particularly important as the accused person and their counsel will not be present before the Court when the matter is addressed and adjourned. Consistent application of the

12-week adjournment period is critical to achieving the underlying objective of the Enhanced Designation of relieving the burden on case management courts caused by frequent, unnecessary court appearances.

13. What about cases in which an appearance 12 weeks away would not fall on the appropriate case management date?

Not every court follows a regularly weekly case management court schedule.

Where an appearance 12 weeks away would not fall on the appropriate case management date – either because court does not follow a regular weekly case management schedule or because the date 12 weeks away would fall on a holiday – the matter should, instead, be adjourned to the appropriate case management date that is approximately 12 weeks away from the date of their next appearance. However, the adjournment should be for a period of three months or less. See Practice Direction, para. 16.