

NOTICE TO THE PROFESSION
PROTOCOL FOR CRIMINAL MATTERS IN THE SUPERIOR COURT OF JUSTICE,
CENTRAL EAST REGION
(Effective May 19, 2020)

Introduction

This Protocol applies to criminal matters in the Superior Court of Justice in the Central East Region, until further notice.

The Protocol is subject to change from time to time as may be necessary.

Criminal Matters Adjourned

By Orders of Chief Justice Geoffrey Morawetz made on March 15, 2020, and May 5, 2020, all criminal proceedings in the Superior Court of Justice including pre-trial motions, trials and the delivery of judgment, and guilty plea and sentencing proceedings, that were scheduled to take place between March 16 and July 6, 2020, were adjourned to specified dates in the week of July 6, 2020. By Notice dated April 20, 2020, all jury proceedings were suspended until September, 2020, at the earliest.

The specified July dates are “to be spoken to” dates only. It is anticipated that on those July dates, new proceed dates will be fixed by the presiding judge.

It is *not* possible for the Court to offer new proceed dates, even on a “target” basis, at this time. Counsel are asked to refrain from contacting trial coordinators about new proceed dates.

Judicial Pre-Trials

Judicial pre-trials (JPTs), to be held by teleconference (conference call), are available for any case in which a JPT was scheduled to be held after March 16, 2020, and for any case in which the defendant has been committed to stand trial in the Superior Court of Justice with no JPT date scheduled.

A JPT can be booked for a defendant charged with *murder or manslaughter* in any location in the Central East Region:

- By contacting Ms. Llyshelle Barrett, Assistant Trial Coordinator, at Llyshelle.Barrett@ontario.ca . These JPTs will be held by teleconference at scheduled times on **Mondays**.

JPTs in *other cases* can be booked as follows:

- Where the charges are outstanding in Barrie, by contacting Ms. Llyshelle Barrett, Assistant Trial Coordinator, at Llyshelle.Barrett@ontario.ca . These JPTs will be held by teleconference at scheduled times on **Thursdays and Fridays**.
- Where the charges are outstanding in Bracebridge, by contacting Ms. Llyshelle Barrett, Assistant Trial Coordinator, at Llyshelle.Barrett@ontario.ca . These JPTs will be held by teleconference at scheduled times on **Thursdays and Fridays**.
- Where the charges are outstanding in Newmarket, by contacting Ms. Llyshelle Barrett, Assistant Trial Coordinator, at Llyshelle.Barrett@ontario.ca . These JPTs will be held by teleconference at scheduled times on **Tuesdays and Wednesdays**.
- Where the charges are outstanding in Oshawa, by contacting Mr. Stephen Colomvakos, Regional Scheduling Assistant, at Stephen.Colomvakos@ontario.ca . These JPTs will be held by teleconference at scheduled times on **Thursdays and Fridays**.
- Where the charges are outstanding in a Tri-County site (Cobourg, Lindsay and Peterborough), by contacting Mr. Stephen Colomvakos, Regional Scheduling Assistant, at Stephen.Colomvakos@ontario.ca . These JPTs will

be held by teleconference at scheduled times on **Tuesdays and Wednesdays.**

Counsel are asked to advise Ms. Barrett/Mr. Colomvakos of any originally scheduled date and location of the JPT.

Counsel will be provided with a specific date and time for the teleconference JPT, as well as conference call dial-in information.

These teleconference JPTs will be available only where:

1. Defence counsel is retained, meaning defence counsel can be noted as counsel of record for the defendant.
2. Counsel requesting the JPT consults other counsel involved and books a date and time that is available to all counsel.
3. Crown and defence counsel cooperate to complete a **fresh joint** JPT form. (Any JPT forms filed previously are not accessible to the judiciary, who are working remotely.)
4. Crown counsel emails the joint form, a synopsis and a copy of the Indictment to Ms. Llyshelle Barrett at Llyshelle.Barrett@ontario.ca or to Mr. Stephen Colomvakos at Stephen.Colomvakos@ontario.ca, respectively.
5. **All** materials must be emailed to Ms. Barrett/Mr. Colomvakos no later than 12 noon on the Friday preceding the date of the teleconference. If counsel fail to meet this deadline, the teleconference JPT will be cancelled.
6. Counsel must be available at the time set for the JPT and must be in a stationary location with good cell phone or land line reception.
7. No-one other than counsel may be present on the teleconference line, without the express permission of the presiding judge. The defendant will not be present for the teleconference.
8. No recording will be made of the teleconference.
9. Estimates of the time needed for all pre-trial motions and the trial itself will be noted by the presiding judge, **but** it will *not* be possible for the presiding judge to offer hearing dates for motions or trials, even on a

“target” basis. Those dates will be fixed on the applicable July “to be spoken to date” specified in the Order of Chief Justice Morawetz referred to above.

10. At the conclusion of the teleconference JPT, the presiding judge will scan or email the completed Report to Trial Coordinator to Ms. Barrett/Mr. Colomvakos. The presiding judge will retain all materials, including the completed Report to Trial Judge, to be placed in the court file when normal court operations resume.

11. In the event a follow-up teleconference JPT is needed, counsel will arrange it with the JPT judge or will contact Ms. Barrett/Mr. Colomvakos to arrange for a date and time.

Where a case was previously pre-tried and counsel wish to discuss resolution or re-election of mode of trial, a further teleconference JPT can be arranged without need to file a fresh JPT form, by contacting Ms. Barrett/Mr. Colomvakos.

Please note that at this time, it is *not* possible to offer teleconference JPTs for defendants who have counsel retained only for the purpose of assisting at the JPT, or for defendants who are self-represented, as those JPTs must take place on the record with the defendant present. In these cases, a rescheduled JPT date will be set when normal court operations resume.

90 Day and Other Bail Reviews

Counsel who wish to schedule a 90 day or other bail review should serve counsel for the opposite party with the materials by email, and then consult opposite counsel as to whether there will be consent.

If there is consent:

1. No hearing need be held.
2. Counsel will jointly complete all necessary paperwork, including terms of release and surety declaration, to enable a registrar to prepare the release document.

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3. Counsel will forward the completed paperwork to the generic email address for the trial coordinator in the location where the defendant is charged.
4. The registrar will prepare the release document (for example, recognizance).
5. The registrar will contact the trial coordinator and arrange to have the release document emailed to a judge of the Court for review and approval.
6. The judge will confirm their approval by return email message to the trial coordinator, who will forward the email to the registrar. This email should be retained by the registrar for the court file.
7. The registrar will contact defence counsel for assistance in obtaining such binding acknowledgement as is required from the surety/sureties.
8. The registrar, pursuant to s. 3(2) of the *Criminal Code*, will sign the release document. It is not necessary for the judge to sign it.
9. The registrar will forward the release document and any other documents required to effect the defendant's release, to the institution.

If there is no consent:

1. Counsel requesting the review should send a copy of the materials and an email requesting a hearing to the generic email address for the trial coordinator in the location where the defendant is charged. Requesting counsel should copy opposite counsel on the email.
2. Where defence counsel requests the hearing, defence counsel should include in the materials either an affidavit of any proposed surety or a surety declaration form, and confirmation that defence counsel witnessed the signature of the surety, either in person or by some other means such as Zoom, Facetime, or Skype, and confirmed identity by viewing photo identification. If counsel seeks relief from compliance with this requirement or any other aspect of the Superior Court's Criminal Proceedings Rules concerning materials required for 90 day/bail reviews, counsel should include that request in the materials sent to the trial coordinator.

3. If counsel anticipates that an interpreter will be needed for the hearing for the defendant, a surety or a witness, counsel must advise the trial coordinator at the time the hearing is requested.
4. The trial coordinator will identify a date and time for the hearing, after consulting both counsel.
5. The trial coordinator will forward the materials to the assigned judge and advise them of the date and time of the hearing.
6. In the event the assigned judge wishes counsel to provide additional materials, the judge will attempt to notify counsel through the trial coordinator, in advance of the hearing.
7. Hearings will take place by teleconference, unless videoconference can be made available. The teleconference line will be one that permits the proceedings to be recorded. It may not be possible to have a court reporter on the teleconference line.
8. The trial coordinator will request that Court Services Division assign a registrar to the teleconference.
9. The trial coordinator will request that Court Services Division obtain any interpreter required for the teleconference.
10. *Review hearings can take place in the absence of the defendant.* If counsel nonetheless wishes the defendant to be present on the teleconference, that counsel must immediately notify Ms. Llyshelle Barrett, Assistant Trial Coordinator, at Llyshelle.Barrett@ontario.ca . Ms. Barrett will make the request of the institution where the defendant is in custody. A Judge's Order is *not* required. *Counsel should request that the defendant be present on the teleconference only if it is truly necessary. There are significant limitations on the number of defendants who can be given access to teleconference lines from the jails, and it may not be possible for institutions to facilitate every request.*
11. The trial coordinator will advise counsel, the jail, and court staff of the teleconference information. The presiding judge will be the Moderator.
12. In advance of the teleconference, counsel who seeks the review should complete a terms of release form and circulate it to opposite counsel.

- 13.If it is not possible for the surety/sureties to be in the presence of defence counsel during the teleconference, defence counsel must provide the surety/sureties with the teleconference information and have the surety/sureties dial in to the teleconference line at the appointed time.
- 14.At the conclusion of the review hearing, the presiding judge may give their decision orally or may reserve their decision and release it to the parties in writing at a later time. In either case, the presiding judge should handwrite a brief written endorsement and if possible, scan it to the trial coordinator to be attached to the Indictment in the future when normal court operations resume.
- 15.If the defendant's release is ordered, the registrar will complete the release document (for example, recognizance), then send it to the judge by email for review. The judge will confirm their approval by return email message. This email should be retained by the registrar for the court file.
- 10.The registrar will contact defence counsel for assistance in obtaining such binding acknowledgement as is required from the surety/sureties.
- 16.The registrar, pursuant to s. 3(2) of the *Criminal Code*, will sign the release document. It is not necessary for the presiding judge to sign it.
- 17.The registrar will forward the release document and any other documents required to effect the defendant's release, to the institution.

Pre-Trial Motions That Were Scheduled To Be Heard in the Period May 16 Through July 10, 2020

Where Crown and defence counsel agree that the pre-trial motion(s) can be heard in writing, or in writing with brief oral submissions to be made by teleconference or videoconference, counsel should submit a written request to the Regional Senior Judge (RSJ) via Ms. Llyshelle Barrett, at Llyshelle.Barrett@ontario.ca and on notice to all other counsel. Ms. Barrett will arrange a teleconference of counsel with the RSJ or her designate to discuss scheduling of the motion(s) and e-filing of materials. [Please note that any motions materials previously filed in hard copy cannot be accessed by the judiciary, who are working remotely, and will need to be re-filed electronically by counsel.]

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Summary Conviction Appeals

Where Crown and defence counsel agree that a summary conviction appeal can be heard in writing, or in writing with oral submissions to be made by teleconference or videoconference, counsel should submit a written request to the Regional Senior Judge via Ms. Llyshelle Barrett, at Llyshelle.Barrett@ontario.ca and on notice to all other counsel. Ms. Barrett will arrange a teleconference of counsel with the RSJ or her designate to discuss scheduling of the appeal and e-filing of materials. [Please note that any summary conviction appeal materials previously filed in hard copy cannot be accessed by the judiciary, who are working remotely, and will need to be re-filed electronically by counsel.)

Guilty Pleas and/or Sentencing Proceedings

This applies where Crown and defence counsel wish a guilty plea and/or sentencing matter to proceed at this time, and agree that it can be heard by teleconference or videoconference.

If a judge of the Court was seized with the matter as of March 16, 2020, counsel should submit a written request to that judge via the trial coordinator at the applicable Court location, at the generic email address set out below and on notice to all other counsel. The trial coordinator will communicate the direction of the judge to all counsel.

If no judge is seized with the matter, counsel should submit a written request to the Regional Senior Judge via Ms. Llyshelle Barrett, at Llyshelle.Barrett@ontario.ca and on notice to all other counsel. Ms. Barrett will arrange a teleconference of counsel with the RSJ or her designate to discuss scheduling of the matter and e-filing of materials.

Consent Orders

Orders on consent, including to extend existing Orders such as driving prohibition Orders and bail pending appeal Orders, can be obtained by sending a Notice of

Motion, supporting materials and a draft Order to the trial coordinator at the applicable Court location, at the generic email address set out below and on notice to all other counsel. The trial coordinator will forward the materials to a judge for review and signature.

Inquiries About Other Matters

Inquiries about any matters not otherwise addressed in this Notice, or where judicial direction is sought should be made in writing to the Regional Senior Judge via Ms. Llyshelle Barrett, at Llyshelle.Barrett@ontario.ca . *Every effort will be made to respond to the inquiry within 48 hours.*

Note re: Pre-Trial Motions Requiring the Hearing of *Viva Voce* Evidence, and Judge Alone Trials

(a) Pre-trial motions requiring the hearing of *viva voce* evidence that were scheduled to be heard in the period May 16 through July 10, 2020:

The Court is making efforts to arrange for the hearing of such motions by remote means, where the defendant consents to proceed by remote means. *Notice will be posted on the Court's website as soon as it is possible to schedule such motions for hearing by remote means.*

(b) Judge alone trials that were scheduled to proceed in the period May 16 through July 10, 2020: The Court is making efforts to arrange for such trials to proceed by remote means, where the defendant consents to proceed by remote means. *Notice will be posted on the Court's website as soon as it is possible to schedule such trials to proceed by remote means.*

Generic Email Addresses

The list of generic email addresses for the trial coordinators in the Central East Region is as follows:

Barrie.SCJ.TC@ontario.ca

Newmarket.SCJ.TC@ontario.ca

Oshawa.SCJ.TC@ontario.ca

Peterborough.SCJ.TC@ontario.ca

Provincial Crown Counsel Contact Information

For Ontario Crown matters, the contact information is:

For Barrie, Lynn Shirreffs, email is Lynn.Shirreffs@ontario.ca and cell is 705-716-4771

For Bracebridge, Lyndsay Jeanes, email is Lyndsay.Jeanes@ontario.ca and cell is 705-706-4773

For Cobourg, Russell Wood, email is Russell.Wood@ontario.ca and cell is 905-376-9226

For Durham, Paul Murray, email is Paul.T.Murray@ontario.ca and cell is 905-213-1564

For Lindsay, David Boulet, email is David.Boulet@ontario.ca and cell is 705-341-4771

For Newmarket, Peter Westgate, email is Peter.Westgate@ontario.ca and cell is 289-763-7049

For Peterborough, Frank Schwalm, email is Frank.Schwalm@ontario.ca and cell is 705-313-6106

Federal Crown Contact Information

For Federal Crown matters, the contact information is:

Carol Shirliff-Hinds, email is carol@shirlifflaw.ca and cell is 289-319-0606, ext. 101

Criminal Lawyers' Association Representative

For assistance where a defendant is self-represented, the contact information is:

Lisa Jorgensen, email is LJorgensen@rubyshiller.com and cell is 416-770-4449

Dated May 19, 2020

A handwritten signature in blue ink that reads "Michelle Fuerst". The signature is written in a cursive, flowing style.

Justice Michelle Fuerst
Regional Senior Judge,
Superior Court of Justice,
Central East Region

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