

PRACTICE DIRECTIVE 10

CONSTITUTIONAL QUESTIONS AND CHARTER S.24(1) REMEDIES

APPLICATION OF THE PRACTICE DIRECTIVE

- 10.01** This Practice Directive applies in any proceeding where an accused
- (a) challenges the constitutional validity, applicability or operability of any statute, regulation or principle of common law; and
 - (b) makes an application for a remedy under s. 24(1) of the *Charter*.

NOTICE

- 10.02** In any case to which Practice Directive 10 applies, the accused shall file in the appropriate court office a Notice of Application and Constitutional Question in Form 3

CONTENTS OF APPLICATION

- 10.03** The Notice of Application shall contain
- (a) the date of hearing;
 - (b) the place of hearing;
 - (c) the law or legislative provision that is challenged;
 - (d) the right or freedom alleged to be infringed or denied, and any statutory or other constitutional provision to be relied upon;
 - (e) the precise relief sought;
 - (f) the grounds to be relied upon, including a concise statement of particulars that explain the points to be argued;
 - (g) a summary of the evidence, whether viva voce, documentary or otherwise to be relied upon;
 - (h) a copy of the Information and court record of proceedings; and
 - (i) an indication of whether or not the accused is in custody and if so the place of detention.

SERVICE AND FILING

- 10.04** The Notice of Application, along with supporting materials, shall be served not less than 14 days before the date of hearing upon:
- (a) the prosecutor who has conduct of the proceedings;
 - (b) the Attorney General of Manitoba through the Director of Constitutional Law for the Manitoba Department of Justice; and
 - (c) the Attorney General of Canada through the Regional Director of the Department of Justice Canada in Winnipeg.

- 10.05** The Notice of Application shall be filed in the appropriate court office not less than 14 days before the date of hearing.

MATERIAL IN SUPPORT OF APPLICATION

10.06 The Notice of Application and Constitutional Question shall be accompanied by:

- (a) transcripts of any earlier proceedings that are material to the determination of the constitutional issue raised;
- (b) copies of any documents intended to be relied upon at the hearing of the application;
- (c) any affidavit evidence upon which the applicant intends to rely at hearing;
- (d) the names of any expert witnesses upon whom the applicant intends to rely and a summary of the evidence expected from those witnesses; and
- (e) any memorandum of law in respect of the allegations made and the grounds relied upon.

10.07 Where a respondent intends to rely upon transcripts, documents, affidavits, or a memorandum of law, the respondent shall serve and file the material no later than 5 days before the hearing of the application.

ABRIDGMENT OR ADJOURNMENT

10.08 A judge may abridge any time prescribed by this Practice Directive where it is in the interests of justice to do so.

10.09 A judge may adjourn the hearing of an application under this Practice Directive where, considering the complexity of the issues raised and compliance with the time frames provided for in this Practice Directive, there would not be sufficient time to allow the respondent to prepare a proper response to the application.