

PRACTICE DIRECTIVE 6

APPLICATIONS

APPLICATION OF THE PRACTICE DIRECTIVE

6.01(1) Any application or motion for an order pursuant to the Code, or such other enactment to which the provisions of the Code apply, shall be commenced by a Notice of Application in Form 1.

6.01 (2) Practice Directives 6.01 to 6.08 apply to all proceedings commenced by a Notice of Application, except where otherwise expressly provided or as ordered by a judge of the court.

CONTENT OF APPLICATION

- 6.02** Every Notice of Application shall include:
- (a) the place of hearing in accordance with Practice Directive 4.03(1);
 - (b) the date and time of hearing;
 - (c) the precise relief sought;
 - (d) the grounds to be argued, including a reference to any statutory provision or Practice Directive to be relied upon;
 - (e) a reference to the documentary, affidavit and other evidence to be used at the hearing of the application including any statutory provisions;
 - (f) whether any order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials required under these Practice Directives;
 - (g) A copy of the Information; and
 - (h) An indication of whether the accused is in custody, and if so, the place of detention.

SERVICE AND FILING

Minimum Notice Period

6.03 (1) Except where otherwise expressly provided by the Code or these Practice Directives, or as ordered by a judge of the court, the Notice of Application and all supporting documents shall be served on all responding parties at least four days before the date of the hearing of the application.

Minimum Filing Period

6.03(2) Except where otherwise expressly provided by the Code or these Practice Directives, or as ordered by a judge of the court, the Notice of Application and supporting documents shall be filed at least two days before the date on which the application shall be heard, in the court office where the application is to be heard.

EVIDENCE ON APPLICATIONS:

EVIDENCE BY AFFIDAVIT

General Practice Directive

6.04 Evidence on an application may be given by affidavit in Form 4 and in accordance with Practice Directive 4.04, unless the Code or other applicable statute or a judge of the court by order provides otherwise.

EVIDENCE BY EXAMINATION OF WITNESSES

6.05 Subject to the Code or any other applicable statute or rule of common law, a witness may be examined or cross-examined upon the hearing of an application with leave of the presiding judge, and nothing in these Practice Directives shall be construed so as to affect the authority of a judge hearing an application to receive evidence through the examination of witnesses.

USE OF AGREED STATEMENT OF FACTS

6.06 A judge, before or upon the hearing of the application, may dispense with the filing of any transcripts or affidavits required in these Practice Directives and act upon a written statement of facts agreed upon by the prosecutor and the accused person or that person's counsel.

ABANDONMENT OF APPLICATIONS

Notice

6.07 (1) Where an applicant intends to abandon the application, the applicant shall file, and serve on all parties, a Notice of Abandonment in Form 6, signed by the counsel of record in the application, or by the applicant.

Dismissal as Abandoned

6.07 (2) Where a Notice of Abandonment has been filed, a judge of the court may dismiss the application as an abandoned application without the attendance of counsel or the applicant..

Dismissal for Failure to Appear

6.07 (3) An applicant who fails to appear at the hearing of an application shall be deemed to have abandoned the application, unless the court orders otherwise.

SUMMARY DISMISSAL OF APPLICATION

Application by Respondent

6.08 (1) Upon application by a respondent that a Notice of Application does not show a reasonable basis for the order sought, a judge of the court may, if satisfied that the matter is frivolous or vexatious or fails to disclose a reasonably arguable point dismiss the application summarily and cause the applicant to be advised accordingly.

Summary Dismissal Not Final

6.08 (2) A summary dismissal of an application pursuant to this Practice Directive shall not preclude a trial judge from hearing a renewed application seeking the same or substantially similar relief where the trial judge is satisfied that to do so would be in the interests of justice.