

# **PRE-TRIAL COORDINATION PROTOCOL**

## **ADULT CHARGES**

**This Protocol is subject to change. It is expected that as the Project proceeds, changes will be made and the Protocol will be amended. Please refer to our website at [www.manitobacourts.mb.ca](http://www.manitobacourts.mb.ca) for the most updated version of the Protocol**

## Contents

PREAMBLE.....	3
APPLICATION OF PROTOCOL.....	3
PRE-TRIAL COORDINATOR .....	4
PRE-TRIAL COORDINATOR’S DOCKET .....	5
ADMINISTRATIVE TIMELINES .....	5
Custody PTC Docket .....	5
Out of Custody PTC Docket.....	5
Bail Triage Docket .....	6
Unrepresented Accused on the Bail Triage Docket .....	6
Custody PTC Dockets .....	7
Out of Custody PTC Dockets .....	7
Counselling/Diversion Programs.....	7
Expiration of timeline.....	8
Legal Aid / U of M Law Clinic Timeline Extension .....	8
Limit on Remands before PTC.....	8
Pre-Sentence Reports (PSR).....	8
UNREPRESENTED ACCUSED – OUT OF CUSTODY .....	9
PRELIMINARY HEARING & TRIAL DATES .....	9
CASE MANAGEMENT .....	9
CONSENT REMANDS .....	10
NON-APPEARANCE BY AN ACCUSED.....	10
NON-APPEARANCE BY COUNSEL .....	10
RE-ARREST.....	11
GUILTY PLEAS .....	11
SENIORITY OF COUNSEL.....	12
ADMINISTRATIVE COURT .....	12
LEGAL AID ADMINISTRATIVE COURT .....	12
Appendix A - Crown Stay of Proceedings Form .....	13
Appendix B – Pre-Plea Comprehension Inquiry Form .....	15
Appendix C – Designated Offences.....	16
Appendix D – Order of Precedence .....	17

# PRE-TRIAL COORDINATION PROTOCOL

---

## **PREAMBLE**

Section 482.1(1)(b) of the Criminal Code gives the Court the power to delegate certain administrative tasks to Court personnel. The front-end system requires that the administrative processing of all criminal cases be conducted by Pre-Trial Coordinators (PTC). This process will allow the Crown and the Defence to identify, discuss and resolve administrative issues in a fashion that does not require an appearance before a Judge.

Effective pre-trial coordination will ensure that when a matter appears before a Judge, only meaningful events will occur such as:

- 1) Contested Motions;
- 2) Bail applications;
- 3) Contested bail variations;
- 4) Guilty pleas
- 5) Hearings/trials;
- 6) Sentencings.

## **APPLICATION OF PROTOCOL**

This Protocol applies to all criminal prosecutions involving adults appearing in the Provincial Court – Winnipeg Centre.

All administrative matters relating to these cases will be managed by Pre-Trial Coordinators (PTCs) who are limited jurisdiction Justices of the Peace. This Protocol is the document from which the PTCs obtain their authority and direction. They have no discretion to deviate from this Protocol.

## **PRE-TRIAL COORDINATOR**

Non-discretionary case management by the PTC is essential for successful processing of cases through the criminal justice system. The PTCs are mandated to deal with administrative tasks to ensure that:

- 1) An accused person has been informed of the right to be represented by counsel;
- 2) An accused person has been advised of their right to have a trial in English or French;
- 3) The defence has received sufficient disclosure to enter a plea. This does not include external reports, such as laboratory reports, medical reports, fire commissioner reports, etc.
- 4) Any bail variation issues have been addressed;
- 5) The Crown has reviewed the evidence and considered its position;
- 6) Meaningful discussions between counsel have occurred;
- 7) Counselling or diversion issues have been addressed;
- 8) A pre-plea comprehension inquiry has been conducted;
- 9) The Certificate of Trial Readiness or Schedules A and/or B as applicable have been completed.
- 10) A trial slip has been signed or counsel has undertaken to forward an Acknowledgement of Trial to the Courts within 30 days.

Additionally, the PTCs have the authority to perform the following tasks:

- 1) Adjourn matters as required provided the matter has not exceeded its timeline or number of permitted remands;
- 2) Endorse a stay of proceedings upon being provided with a Crown Stay of Proceedings Form (see attached Appendix "A");
- 3) Issue, cancel or hold warrants;
- 4) Allow counsel to withdraw in the following circumstances:
  - i) if counsel seeking to become counsel of record is present and, if the matter is scheduled for trial or preliminary hearing, new counsel is available and prepared to proceed on the date scheduled for hearing; or

- ii) if the PTC issues a warrant for arrest for the accused and counsel asks to be removed as counsel of record;
- 5) Allow counsel to withdraw if the Accused advises he intends to represent himself and does not intend to make further efforts to retain counsel;
- 6) Order forfeiture of items seized pursuant to charges laid under the CDSA with the consent of both crown and defence.
- 7) Adjourn a matter to the Queen's Bench Assignment Court if the accused appears on an indictable offence, other than an offence listed in section 469 of the *Criminal Code*, the offence is not one over which a provincial court judge has absolute jurisdiction under section 553 and neither the accused or the Crown has requested a preliminary inquiry.

## **PRE-TRIAL COORDINATOR'S DOCKET**

Between the time a charge is laid and a matter is ready to proceed before a Judge, the matter will appear on a PTC docket. The PTCs, who are bound by certain administrative timelines, will oversee these dockets.

## **ADMINISTRATIVE TIMELINES**

The PTC has no authority to deviate from the timelines established by this Protocol. Failure to comply with the timelines as directed by the PTC will result in the matter being referred to the next appropriately designated Administrative Court\*.

### **Custody PTC Docket**

Where the accused has been denied bail, does not intend to apply for bail or the matter has appeared in bail court or on the bail triage docket for 5 days without a bail application the matter will next appear as follows:

- i. Provincial adult matters - this docket is held every Monday and Friday starting at 9:15 a.m. and ending at 11:15 a.m. in Courtroom 302 at 408 York Avenue in Winnipeg.
- ii. Federal adult matters - this docket is held every 2nd, 4th and 5th Thursday at 9:15 a.m. in Courtroom 302 at 408 York Avenue.

### **Out of Custody PTC Docket**

- i. Provincial adult matters - this docket is held every Monday, Tuesday and Wednesday at 1:00 p.m. in Courtrooms 301 and 302 at 408 York Avenue in Winnipeg.

- ii. Federal matters - this docket is held every Thursday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg, and every Monday at 1:00 p.m. in Courtroom 303 at 408 York Avenue in Winnipeg.
- iii. Diversion Dockets - this docket is held every Friday at 1:00 p.m. in Courtroom 301 at 408 York Avenue in Winnipeg.

All proceedings will be digitally monitored. The only exception will be the PTC Bail Triage Docket.

### **Bail Triage Docket**

All adult bail applications and expedited custody dispositions will appear on the bail triage docket before being transferred to bail court. This docket is held Monday to Friday starting at 9:30 in Courtroom 301 at 408 York Avenue in Winnipeg for triage of custody matters. Bail applications as well as expedited custody dispositions (matters where the accused has been on the bail triage docket for 5 days or fewer and wishes to dispose of the matter rather than apply for bail) can be heard in the bail courts, time permitting, where both Crown and Defence are ready to proceed. Prior to a matter being transferred into the bail court the PTC will confirm with the Crown that they are aware of the transfer.

All accused will appear on a 9:30 docket and will be “triaged” by the Pre-Trial Coordinator for the purpose of applying for Judicial Interim Release. If the accused is without counsel on the first appearance, the PTC will transfer the matter to the Bail Court Judge for an appearance either by video or in person.

If counsel of record does not appear on a matter **prior to 11:15 a.m.**, the PTC will transfer the matter to appear before the Bail Court Judge.

The PTC will monitor the amount of time that a new arrest appears on the bail docket. After five working days, the PTC will remand the accused to the custody PTC docket for a crown to be assigned if the accused is represented by counsel. Any matter returning to the bail triage docket will be remanded back to the PTC custody docket after three working days on the bail triage docket. If defence counsel requests the matter remain on the bail docket, the matter will be transferred into court for counsel to seek authorization from the presiding bail court Judge.

### **Unrepresented Accused on the Bail Triage Docket**

If the accused is unrepresented after the five day time limit, the matter will be remanded to courtroom 401 at 10:30 a.m. for the accused to appear with the assistance of duty counsel. If the accused does not dispose of the matter on the first appearance in 401, the judge may adjourn the matter for a second time in 401 provided the matter will proceed to sentencing or the judge may adjourn the matter to the Custody Administrative Court where it

will remain until a plea has been entered, either with the assistance of Legal Aid duty counsel, counsel for the accused or the accused representing him or herself.

### **Custody PTC Dockets**

Once a matter is remanded to the custody PTC docket, the name of the assigned Crown will be provided at the first appearance on the docket.

The PTC will monitor all matters where the accused is represented by counsel for 6 weeks from the date of arrest unless the accused is charged with a designated offence as indicated in Appendix "C". On all designated offences, a timeline of 16 weeks will apply.

If the accused is unrepresented the matter will be transferred to the next appropriately designated Administrative Court docket.

### **Out of Custody PTC Dockets**

*All charges:*

The first appearance in court on all out of custody matters will be 6 to 8 weeks after release.

The name of the assigned Crown and disclosure is expected to be provided to defence at the first appearance on the PTC docket. Disclosure includes court assistance reports, criminal record if any, police narrative reports, officer's notes and written statements.

The PTC will monitor all matters for 8 weeks from the first appearance on the docket unless the accused is charged with a designated offence as indicated in Appendix "C". On all designated offences, a timeline of 16 weeks will apply.

*Domestic Violence charges only:*

Before the first court appearance, the assigned crown is expected to review particulars, obtain input from Victim Services, if appropriate, and be ready to engage in plea discussions with Defence Counsel. The first appearance in court will be 6 weeks after release.

### **Counselling/Diversion Programs**

If the Crown confirms a matter will be referred to a counselling/diversion program, and defence accepts the diversion position, the PTC will adjourn the matter to the diversion PTC docket. The diversion timeline will be seven months from the first appearance on the diversion docket.

The following guidelines will apply from the date of referral;

- 1) an initial one month remand to confirm enrolment in the program;

- 2) a second one-month remand may be permitted if enrolment has not been confirmed and the Crown does not oppose the remand;
- 3) remands up to three months as agreed by the Crown to monitor progress in the program.

If the PTC is satisfied that the matter is progressing and the Crown agrees, diversion matters may remain on the diversion docket beyond the timeline.

Once the accused has provided the Crown with confirmation of successful completion of the program, the Crown may file a Stay of Proceedings Request Form with the PTC on or before the next remand date.

### **Expiration of timeline**

If both Crown and Defence agree that a specific case will require more than the assigned timeline, they may request a consent timeline extension from the PTC. The PTC may only grant one consent timeline extension and one remand if the maximum of five remands has been reached. There is no limit on the length of the extension that may be granted. Counsel may arrange to have the matter brought forward if it is ready to proceed prior to the end of the timeline.

Once a matter has reached the end of its timeline the matter must be scheduled for preliminary hearing, trial or disposition. If this does not occur, the matter will be adjourned to the next appropriately designated Administrative Docket to appear before a Judge

### **Legal Aid / U of M Law Clinic Timeline Extension**

The PTC will grant one timeline extension of up to 8 weeks from the date of assignment on matters where there has been a new assignment of counsel who are staff Legal Aid lawyers or students supervised by the U of M Legal Aid Clinic.

### **Limit on Remands before PTC**

A maximum of five remands will be allowed on the PTC docket. If additional remands are requested, the matter must go to the appropriately designated Administrative Court.

### **Pre-Sentence Reports (PSR)**

When a PSR is ordered the Judge will set a due date for the report and set the sentencing date for the accused with the input of counsel.

A date is to be set in accordance with the guidelines regarding due dates below:

- For Adult in custody, 4 weeks.
- For Adult in custody with a Gladue report, 5 weeks.

- For Adult out of custody, 10 weeks.
- For Adult out of custody with a Gladue report, 10 weeks.

## **UNREPRESENTED ACCUSED – OUT OF CUSTODY**

If an accused is not represented by counsel at the first appearance it is expected that:

- the PTC will advise the accused of the right to counsel;
- the accused will meet with a Legal Aid representative and will be granted a remand to allow processing of the Legal Aid application;
- if the accused wants to retain private bar counsel, the PTC will allow a remand for counsel to be consulted;
- if the accused does not wish to obtain counsel, the accused will be provided with disclosure as well as the name and phone number for the Crown Attorney assigned to his file or the appropriate Supervising Senior Crown Attorney. The accused will be granted a remand in order to contact the assigned Crown Attorney to obtain the Crown's position and begin discussions.

## **PRELIMINARY HEARING & TRIAL DATES**

When a matter is being set for Preliminary Hearing or Trial, the following documents must be filed with the Court when the date is set:

- 1) Certificate of Trial Readiness;
- 2) Trial Slip;
- 3) Forms A & B, as applicable.

The PTC may accept an undertaking by counsel to file the documents with the Court within 30 days.

## **CASE MANAGEMENT**

Unless previously waived by the Court, a Case Management Conference must be arranged:

- 1) prior to setting a multi-day Trial or Preliminary Hearing
- 2) at the request of either Crown or Defence Counsel
- 3) upon the direction of the Court

Once a Case Management date is set, charges will be remanded:

- out of custody – to the Case Management docket which sits every Thursday at 2:00 p.m. in Courtroom 302 at 408 York Avenue in Winnipeg, two weeks after the Case Management date;
- in custody – to the Custody Triage docket , which sits every Monday and Friday at 9:15 a.m. in Courtroom 302 at 408 York Avenue in Winnipeg, two weeks after the Case Management date.

## **CONSENT REMANDS**

When both the Crown and Defence agree to a remand, either party may inform the PTC of the request by email and no appearance by counsel is required.

Consent Remands will not be allowed in the following two situations:

- 1) When there are personal appearance requirements for an accused;
- 2) When the remand date requested does not comply with the timeline requirements.

## **NON-APPEARANCE BY AN ACCUSED**

If an accused does not appear at the PTC out of custody docket and has a personal appearance requirement or does not have counsel appear, the non-appearance will be noted and the matter may be remanded for up to two weeks on the PTC docket. If the accused still does not appear on the next remand, the PTC will issue a warrant for the arrest of the accused.

At the Crown's request, the PTC may issue the warrant immediately. If defence counsel object to the warrant being issued immediately or the PTC is not prepared to issue the warrant the matter will be transferred to appear before a Judge.

If the accused appears on the date following the non-appearance, the matter will proceed as usual. The timeline requirements will not be suspended during this period.

## **NON-APPEARANCE BY COUNSEL**

If counsel does not appear on a matter that is on the PTC custody triage docket and there has been no prior request for a remand made to the PTC or the Crown, the PTC will adjourn the matter to the next appropriately designated Administrative Docket.

If counsel does not appear on a matter that is on the PTC out of custody docket and there has been no prior request for a remand made to the PTC or the Crown, the PTC will

adjourn the matter two weeks. If there is no appearance on the subsequent date, the PTC will adjourn the matter to the next appropriately designated Administrative Court\*.

## **RE-ARREST**

### *Breach & Fail to Appear Charges*

An accused who is arrested on a breach or fail to appear charge and subsequently appears on the PTC docket without new substantive charges will be reinserted, with respect to the administrative timelines, at the same point the Accused was immediately prior to the arrest. If the Accused had reached the end of the timeline at the time of arrest, one last remand will be permitted before a plea is required.

### *New Substantive Charges*

An Accused who is arrested on a new substantive charge will be assigned a timeline for the new matters. The timeline on the existing charges will not be affected by the new timeline, except in cases where the Crown agrees to “marry up” or amend the old timeline to be the same as that of the new charges.

## **GUILTY PLEAS**

### *In Custody*

Counsel will advise the PTC when a matter is ready for sentencing and confirm that the accused is required in person or advise if the video link can be used. Should defence counsel opt to proceed via video link, the sentencing Judge reserves the right to have the accused brought to Court in person for the sentencing hearing. The accused *must* be brought before the sentencing Judge in person when the Crown is seeking a sentence of more than two years from the date of sentencing.

### *Out of Custody*

Counsel will advise the PTC when a matter is ready for sentencing. The matter will be adjourned to an out of custody disposition Court as arranged by Crown and Defence. If counsel cannot agree to a sentencing date, the matter will be adjourned to an Administrative or a Motions Court for a contested adjournment request.

When an unrepresented person wishes to plead guilty on his first court appearance and the Crown agrees to a same day disposition, the PTC will ensure that the accused is aware of all the consequences of such an action. The Pre-Plea Comprehension Inquiry Form (see attached

Appendix “B”) will be completed and signed by the accused, and the matter will be transferred to a same day plea Court for sentencing.

## **SENIORITY OF COUNSEL**

When custody matters are being transferred from a PTC Docket to appear before a Judge via video link on the same day, the PTC must provide an appearance list to the Institution 15 minutes before the commencement of Court. The PTC will give priority to Senior Counsel when the list is created in accordance with section 84(1) of the Legal Profession Act (see Appendix “D”). Any subsequent matters transferred to Court after the initial call will be done on a first come first served basis.

Custody dispositions arranged in advance for a video appearance in courtroom 401 will be on the basis of time slots. Prior to the sentencing date, the time slot may be adjusted based on agreement between Crown and Defence and subject to availability. On the sentencing date, the time slot may only be adjusted with the prior permission of the presiding judge.

## **ADMINISTRATIVE COURT**

When a matter has had 5 remands on the PTC docket or reached the end of its timeline the PTC no longer has jurisdiction over the matter. The PTC will adjourn the matter to the next appropriately designated Administrative Court\* presided over by a Judge. The PTC may at any time refer a matter to the Administrative Court if concerns arise regarding the progress of the matter, the length of a consent extension or due to any other reasonable concern. The Judge may require a plea to be entered and dates set, grant a further remand to an Administrative Court or extend the timeline and refer the matter back to the PTC for further monitoring.

## **LEGAL AID ADMINISTRATIVE COURT**

The Legal Aid Administrative Court docket is for matters where adult out of custody accused are being prosecuted by Manitoba Justice; and where staff lawyers and private bar lawyers are appearing until any outstanding issues regarding the LA certificate have been addressed. Custody matters will not ordinarily appear in the LA Admin Court unless requested by counsel, a PTC or a judge. Individuals who are in custody will be transported to Court unless the appearance is waived.

Cases that will be adjourned to the LA Admin court:

- When an individual advises the PTC that he or she is applying for LA the matter will be adjourned two weeks for the application to be filed.

- If the application has not been filed after two weeks then the matter will be adjourned to the LA Admin Court.
- If 6 weeks after the application has been filed, the LA paralegal advises the PTC that the application is not complete the matter is to be adjourned to the LA Admin Court.
- When LA refuses the application or cancels an existing certificate the matter will be adjourned to the LA Admin Court to review the options (appeal, UM, set a date).

*\*For matters appearing on the Federal PTC Dockets, the next appropriately designated administrative court may be a subsequent administrative court rather than the next administrative court provided the PTC is given the reason a remand to a subsequent administrative court is being sought and the remand is with the consent of both parties.*

# Appendix A – Crown Stay of Proceedings Form

TO BE COMPLETED BY CROWN	<b>CROWN – STAY OF PROCEEDINGS</b>	
	DATE: _____	
	NAME OF ACCUSED: _____	
	DATE OF BIRTH: _____	
POLICE REPORT #: _____		
CHARGES: _____		
COURT POCKET #: _____		
<b>STATUS OF CASE:</b>		
ACCUSED IN CUSTODY: <input type="checkbox"/> YES <input type="checkbox"/> NO		
CURRENT REMAND DATE: _____		<b>Courtroom</b>
<input type="checkbox"/> 408 YORK AVENUE    OR		
<input type="checkbox"/> _____		
<b>I HEREBY DIRECT THAT A STAY OF PROCEEDINGS BE ENTERED FORTHWITH, ON THE RECORD OF PROCEEDINGS OF THE ABOVE NOTED CHARGES.</b>		
CROWN: _____		
SIGNATURE: _____		
CROWN SUPPORT CONTACT _____		PHONE NUMBER _____

**Appendix B – Pre-Plea Comprehension Inquiry Form**

**PRE-PLEA COMPREHENSION INQUIRY FORM**

**I, \_\_\_\_\_, hereby  
acknowledge that:**

- 1. I understand that I have the right to legal counsel and wish to waive that right and represent myself in court.**
- 2. I intend to enter a plea of Guilty.**
- 3. No one is forcing me to plead guilty.**
- 4. I agree that I did the offence(s).**
- 5. By pleading guilty, I know that the Crown will not have to prove the case against me.**
- 6. I understand I will now be sentenced by a Judge and the Judge does not have to follow any agreement made between the Crown Prosecutor and myself.**

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Name of Witness:** \_\_\_\_\_

**(please print)**

## Appendix C – Designated Offences

### Designated Offences

Homicides and fatalities  
Child Pornography  
Attempt Murder  
Aggravated sexual assault & sexual aslt with weapon  
Aggravated assault  
Robbery with firearm  
Robbery  
Sexual Assault cause bodily harm  
Break and Enter – 3 or more  
Break and Enter involving a Home Invasion  
Impaired cause bodily harm  
Criminal Negligence cause bodily harm  
Drive Dangerous cause bodily harm  
Extortion  
Hostage Taking  
Incest  
Perjury  
All firearms and explosives offences  
Overcoming resistance - s. 246  
Administering Noxious Thing with intent  
Criminal harassment  
Mischief endangering life  
Arson  
CDSA Project files as identified by the Federal Crown

# Appendix D – Order of Precedence

C.C.S.M. c. L107

## The Legal Profession Act

Table of Contents

Bilingual (PDF)

Regulations

(Assented to August 9, 2002)

### PART 7 GENERAL

#### Order of precedence

**84(1)** Lawyers who are members are entitled to precedence before the courts and before other tribunals in the following order:

- (a) the Attorney General of Canada;
- (b) the Solicitor General of Canada;
- (c) the Attorney General of Manitoba;
- (d) lawyers who have held the office of the Attorney General of Canada or of Manitoba, according to seniority of appointment to the office;
- (e) lawyers who have held the office of Solicitor General of Canada, according to seniority of appointment to the office;
- (f) lawyers appointed by the Governor General or by the Lieutenant Governor in Council of any province as Her Majesty's counsel learned in the law, according to seniority of appointment to the office, but only if appointed before the coming into force of this Act;
- (g) other lawyers, according to seniority of their registration in the rolls.