

PRACTICE DIRECTION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: SCHEDULING OF RESOLUTION CONFERENCES, PRE-TRIAL CONFERENCES, PRE-TRIAL APPLICATIONS AND *VOIR DIRES*, AND TRIAL DATES IN CRIMINAL MATTERS

Concerns about delay in criminal proceedings at all levels of court, now more than ever, require a meaningful and focused response on the part of all participants in the criminal justice system. The constitutional obligations that flow from the *Charter* right to a trial within a reasonable time have been given an even greater clarity by the Supreme Court of Canada in its judgment of *R. v. Jordan*, 2016 SCC 27.

As part of the Court of Queen's Bench's ongoing attempts to improve "access to justice" in all areas of its jurisdiction, the following direction is now meant to apply to all criminal proceedings in the Court of Queen's Bench. The new practices that follow from this direction are meant to be a purposeful response to the issue of delay in criminal proceedings and flow from what the Supreme Court of Canada in *R. v. Jordan* stipulated as the new time imperatives and "presumptive ceiling" that should guide the Court, Crown and defence.

The new practices set out in this direction build upon previous initiatives (some quite recent) which were similarly put in place to address the issue of delay. As a reminder, some of those previous initiatives included:

- In 2010, the creation of a new Assignment Court which enabled Crown and defence counsel to set earlier pre-trial conference dates "on-line". The new Assignment Court also provided a framework for the setting of in-custody and out-of-custody trial dates pursuant to time guidelines.
- In 2013, the fixing of even more robust timelines for in-custody and out-of-custody trial dates (no later than 10 months for in-custody matters, and no later than 12 months for out-of-custody matters as of the date of the first pre-trial conference).
- In 2012, the commencement of work (now completed and in effect) on new criminal rules intended to streamline and render more

rigorous all stages of the criminal proceeding and the summary conviction appeal appearing in the Court of Queen's Bench.

- In 2015, the setting of all future trial dates at the first Court of Queen's Bench pre-trial conference.
- In 2015, the setting of sentencing hearing dates at the time that a conviction was entered where the sentencing was not already taking place at that time.

This current Practice Direction is the Court's most recent response to this urgent issue. It will now mandate the following additional or new approaches to be employed and followed by judges and counsel in criminal cases proceeding through the Court of Queen's Bench.

Trial dates are to be fixed so as to comply with the 30-month presumptive ceiling in *R. v. Jordan*, which is calculated by taking the time from the laying of the charge to the presumptive end of the trial. Within this timeframe, generally, trial dates for in-custody accused will be given priority over trial dates for out-of-custody accused.

To address the tension between the right of an accused to be tried within a reasonable time and the accused's right to counsel of choice in the context of the Court's institutional concern for the administration of justice and how delay can compromise this institutional concern even where counsel are consenting to delay, the Court will permit in certain cases where the accused provides an informed written waiver (in the form attached and as on the Manitoba Courts website) and Crown counsel consents, up to an additional six months of delay above the 30-month presumptive ceiling so that counsel who is sought by the accused is able to act.

It is expected that in advance of the pre-trial conference, defence counsel will have considered whether they are available for trial within the timeframe set out in *R. v. Jordan* and, if not, whether the accused executed a waiver of rights under s. 11(b) of the *Charter*. It is also expected that Crown counsel will have considered whether the Crown consents to any extension of the *R. v. Jordan* timeframe.

Where a party takes issue with a trial date imposed in accordance with this Practice Direction, any party may file a motion returnable before the Chief Justice or the Associate Chief Justice to seek to reschedule this trial date. Trial dates will be rescheduled only in exceptional circumstances.

In addition, the following additional or new approaches will be employed and followed by judges and counsel:

- Within 45 days of the date on which an accused is committed to stand trial, a resolution conference (for a trial by judge and jury) or a pre-trial conference (for a trial by judge without a jury) will be held.
- Where a matter is not resolved at the first scheduled resolution conference, the matter will proceed to a pre-trial conference.
- Trial dates will continue to be set at the first pre-trial conference. As previously required, counsel of record must be present.
- With the new *Criminal Proceedings Rules of the Manitoba Court of Queen's Bench* (in force on October 1, 2016), it should be expected that there will be an increased rigour brought to the assessment of issues at pre-trial conferences. The Court expects that issues will have been discussed by Crown and defence counsel before the first pre-trial conference so that there may be productive discussions at the pre-trial conference to streamline the issues for trial. This includes a consideration of those issues requiring a pre-trial adjudication or *voir dire*, with the expectation that in a pre-trial conference, counsel will be able to explain the evidentiary foundation and time required for a pre-trial application or *voir dire*.
- It may also be expected that in most cases, pre-trial applications and *voir dire*s in judge-alone trials will be dealt with in the days immediately preceding the trial proper and not during a separate earlier set of dates. The scheduling of pre-trial applications and *voir dire*s during a separate earlier set of dates in advance of the trial proper will be exceptional.

Coming into effect

This Practice Direction comes into effect immediately.

ISSUED BY:

"Original signed by Chief Justice Joyal"

**The Honourable Chief Justice Glenn D. Joyal
Court of Queen's Bench (Manitoba)**

DATE: October 20, 2016

R. v. _____

File No. _____

WAIVER OF RIGHTS UNDER S. 11(b) OF THE CHARTER

I, (name of accused), hereby acknowledge the following:

- 1) I understand that, under s. 11(b) of the Charter, I have the right to be tried within a reasonable period of time;
- 2) the Supreme Court has held that a delay of more than 30 months between the date of the charge and the date of the trial is usually not reasonable;
- 3) I agree to my trial being scheduled beyond the 30 month timeframe if necessary to accommodate my lawyer's availability. In doing so, I waive my rights under s. 11(b) of the Charter.

Date

Signature of Accused

Signature of Counsel