

PRACTICE DIRECTIVES
FOR CONTESTED APPLICATIONS
IN THE PROVINCIAL COURT OF MANITOBA

November 4, 2013

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PREAMBLE TO PRACTICE DIRECTIVES FOR CONTESTED APPLICATIONS IN THE PROVINCIAL COURT OF MANITOBA

I. The fundamental objective of the Practice Directives

The fundamental objective of the Practice Directives is to reflect the public interest in having in place procedures that ensure contested proceedings in the Provincial Court of Manitoba are dealt with justly and efficiently.

This includes:

- (1) dealing with the prosecution and the defence fairly;
- (2) recognizing the rights of the accused;
- (3) recognizing the interests of witnesses;
- (4) dealing with proceedings, including the scheduling of court time, in ways that consider:
 - (a) the gravity of the offence alleged;
 - (b) the complexity of what is at issue;
 - (c) the severity of the consequences for the accused and others affected;
and
 - (d) the needs of other cases.

II. How the Practice Directives address the fundamental objective

These Practice Directives address the fundamental objective by providing for:

- (1) simple, effective and efficient management of contested proceedings by the court in order to prevent unnecessary delays; and
- (2) the just determination of contested proceedings by requiring proper notice, and, where appropriate, documented evidence.

III. The duties of counsel, applicants and respondents

Each counsel, applicant and respondent, in the conduct of a contested proceeding, while fulfilling all applicable professional obligations, must:

- (1) prepare and conduct the proceeding in accordance with the fundamental objective of the Practice Directives; and
- (2) comply with these Practice Directives, and any other Practice Directives or orders made by the court.

IV. The duties of the court

The court must take into account the fundamental objective of the Practice Directives when applying or interpreting any of the Practice Directives.

PRACTICE DIRECTIVE 1

GENERAL MATTERS

CITATION

Short Title

1.01 These Practice Directives may be cited as the Provincial Court Practice Directives for Contested Matters in the Provincial Court of Manitoba.

MATTERS TO WHICH PRACTICE DIRECTIVES APPLY

Provincial Court of Manitoba

1.02(1) Except where otherwise stated, or as provided in 1.02(2), these Practice Directives apply to contested applications within the jurisdiction of the Provincial Court of Manitoba. These Practice Directives do not apply to *ex parte* applications or other applications that do not require that notice be given, except for those Practice Directives designating the appropriate forms to be used.

1.02(2) These Practice Directives do not currently apply to proceedings under *The Child and Family Services Act* or *The Family Maintenance Act*.

DEFINITIONS

1.03 In these Practice Directives, unless the context otherwise requires,

“accused” means a person charged with any offence including a summary conviction offence;

“applicant” means a person who makes an application or motion;

“application” means a proceeding that is commenced in court by a notice of application or a notice of motion, and is relative to an Information;

“case management judge” means a judge who presides at a Judicial Case Management Conference;

“*Charter*” means the *Canadian Charter of Rights and Freedoms*;

“*Code*” means the *Criminal Code*;

“counsel or lawyer” means a person who is entitled by law to practice as a barrister or solicitor in Manitoba or to appear before the court;

“counsel or lawyer of record” means the person who represents or has represented the accused in the proceedings in respect of which the application is being made, or the counsel who has filed a designation in Form 2 pursuant to section 650.01 of the *Code*, but does not include counsel who is appearing for the accused as legal aid duty counsel, or counsel who is appearing for the accused as a friend of the court;

“court” means the Provincial Court of Manitoba;

“court office” means the office as set out in Schedule 1 to these Practice Directives, at which the Information is held;

“hearing” means the hearing of an application, motion, preliminary inquiry or trial relative to an Information;

“holiday” means:

- (a) any Saturday or Sunday,
- (b) any special holiday proclaimed by the Governor General or the Lieutenant Governor,
- (c) New Year’s Day,
- (d) Louis Riel Day,
- (e) Good Friday,
- (f) Easter Monday,
- (g) Victoria Day,
- (h) Canada Day,
- (i) Civic Holiday,
- (j) Labour Day,
- (k) Thanksgiving Day,
- (l) Remembrance Day,
- (m) Christmas Day,
- (n) Boxing Day,

and where a holiday falls on a Saturday or on a Sunday, the first day following which is not a holiday shall be deemed to be a holiday;

“Information” means an Information as provided for in the *Code*;

“judge” means a judge of the court;

“justice” means a justice of the peace or a provincial court judge;

“party” means an applicant, a respondent, and a person given standing by the court in a proceeding, and includes counsel for a party;

“proceeding” means an application, a preliminary inquiry, a trial, a disposition hearing and/or an appearance on a docket court;

“prosecutor” means the Attorney General of Manitoba, the Attorney General of Canada or the person who institutes proceedings to which the *Code* applies, and includes counsel acting on behalf of any of them;

“respondent” means a person against whom an application or motion is made;

“trial coordinator” means a person designated as such by the Chief Judge of the Province of Manitoba for each court office.

MATTERS NOT PROVIDED FOR

1.04 Where matters are not provided for in these Practice Directives, the practice shall be determined by analogy to them.

PARTY ACTING IN PERSON

1.05 Where an accused, applicant or respondent is not represented by counsel but acts in person, anything that these Practice Directives require or permit counsel to do shall or may be done by that person.

FORMS

1.06 The forms prescribed in the Appendix of Forms to these Practice Directives are intended to assist parties who have proceedings before the court and to promote uniformity of practice in the court.

PRACTICE DIRECTIVE 2

NON-COMPLIANCE WITH THE PRACTICE DIRECTIVES

COURT MAY DISPENSE WITH COMPLIANCE

2.01 Where there has been a failure or inability to comply with these Practice Directives, or where counsel requests the court to dispense with the application of one or more of the Practice Directives, the court may, in the interests of justice:

- (a) grant such order that is appropriate in the circumstances; or
- (b) subject to the requirements of any statute, dispense with compliance with any Practice Directive at any time.

PRACTICE DIRECTIVE 3

TIME

COMPUTATION

- 3.01** In the computation of time under these Practice Directives,
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding both the day on which the first event happens and the day on which the second event happens;
 - (b) where a period of less than 7 days is prescribed, holidays shall not be counted;
 - (c) where the time for doing an act under these Practice Directives expires on a holiday, the act may be done on the next day that is not a holiday; and
 - (d) service of a document made after 4 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

EXTENSION OR ABRIDGMENT

General powers of Court

3.02 (1) The court may by order extend or abridge any time prescribed by these Practice Directives or an order, on such terms as are just.

3.02 (2) An application for an order extending time may be made before or after the expiration of the time prescribed.

PRACTICE DIRECTIVE 4

COURT DOCUMENTS

CONTENTS

General heading

4.01(1) Every document in an application shall have a heading in accordance with Form 1 that sets out the name of the court, location, and court file number, if known.

Body of document

4.01(2) Every document in an application shall contain:

- (a) the title of the document;
- (b) the names of the parties;
- (c) its date; and
- (d) the name, address and telephone number of counsel filing the document or, where a party acts in person, his or her name, address for service and telephone number.

FILING OF DOCUMENTS

Place of filing

4.02 (1) All documents shall be filed in the appropriate court office.

Method of filing documents

4.02 (2) All documents shall be filed by delivering, mailing or faxing them to the appropriate court office.

Date of filing

4.02 (3) The date of the filing, in the case of documents delivered or mailed, shall be the date that is stamped or otherwise affixed on the face of the document by the court office in which the document is filed. The date of the filing, in the case of documents sent by fax to a court office, shall be the date that appears on the fax confirmation sheet, except if that date is after 4:00 p.m., or on a holiday, it shall be deemed to have been made on the next day that is not a holiday.

Where document not received

4.02 (4) Where a court office has no record of the receipt of a document alleged to have been delivered, mailed or faxed, the document shall be deemed not to have been filed, unless the court orders otherwise.

AFFIDAVITS

Format

4.03(1) An affidavit used in a proceeding shall

- (a) be in Form 3;
- (b) be expressed in the first person;

- (c) state the full name of the deponent and, if the deponent is a party or counsel, officer, director, member or employee of a party, shall state that fact;
- (d) be divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular statement of fact; and
- (e) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations.

Contents

4.03 (2) An affidavit shall be confined to a statement of facts within the personal knowledge of the deponent and to evidence that the deponent could give if testifying as a witness in court, except that an affidavit may contain statements of the deponent's information and belief if the source(s) of the information and the fact of belief are specified in the affidavit.

Exhibits

4.03 (3) An exhibit that is referred to in an affidavit shall be marked as such by the person before whom the affidavit is sworn or affirmed and where the exhibit:

- (a) is referred to as being attached to the affidavit, it shall be attached to and filed with the affidavit; and
- (b) is a document, a copy shall be served with the affidavit, unless it is impractical to do so.

For a corporation

4.03 (4) Where these Practice Directives require an affidavit to be made by a party and the party is a corporation, the affidavit may be made for the corporation by an officer, director or employee of the corporation.

Deponent incapable of writing name

4.03(5) Where it appears to a person taking an affidavit that the deponent is incapable of writing his or her name, the person shall certify in the jurat that the affidavit was read in the person's presence to the deponent, that the deponent indicated his or her understanding of it, and that the deponent placed his or her mark on it in the presence of the person taking the affidavit.

Deponent who does not understand language

4.03(6) Where it appears to a person taking an affidavit that the deponent cannot read, or does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was read and/or interpreted to the deponent in the person's presence, named in the jurat, who took an oath or made an affirmation before the person to read and/or interpret the affidavit correctly.

Alterations

4.03 (7) Any interlineations, erasure or other alteration in an affidavit shall be initialed by the person before whom the affidavit is sworn or affirmed and, unless so initialed, the affidavit shall not be used without leave of the presiding judge.

PRACTICE DIRECTIVE 5

SERVICE OF DOCUMENTS

MANNER OF SERVICE

5.01 Service of a document may be effected:

- (1) On an accused who is represented by counsel, by:
 - (a) leaving a copy of the document with counsel or an employee in the counsel's office;
 - (b) sending a copy by registered or certified mail to the counsel's office;
 - (c) faxing a copy to the counsel's office in accordance with Practice Directive 5.02(6); or
 - (d) attaching a copy of the document to an e-mail message sent to the counsel's e-mail address in accordance with Practice Directive 5.02(10).

- (2) On an accused not represented by counsel, by:
 - (a) leaving a copy of the document with the accused;
 - (b) mailing a copy of the document to the accused by registered mail or certified mail;
 - (c) faxing a copy of the document to the accused in accordance with Practice Directive 5.02(6);
 - (d) attaching a copy of the document to an e-mail message sent to the accused's e-mail address in accordance with Practice Directive 5.02(10);
or
 - (e) unless otherwise specified by the *Code* or by statute, in such manner as may be ordered by a judge, as an alternative to personal service, upon application by the moving party for such an order.

- (3) On the Attorney General of Manitoba, or the Attorney General of Canada, by leaving a copy of the document with counsel of the appropriate regional office of such Attorney General, or their designate, or with counsel or their designate at the office of the prosecutor retained by such Attorney General to have carriage of a specific prosecution, or by fax in accordance with Practice Directive 5.02(6) or by email in accordance with Practice Directive 5.02(10).

- (4) On a corporation not represented by counsel, by leaving a copy of the document with an officer, director or registered agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business, or by fax in accordance with Practice Directive 5.02(6), or by email in accordance with Practice Directive 5.02(10).

PROOF OF SERVICE

Affidavit of service

5.02(1) Service of a document may be proved by an affidavit of the person who served it, in Form 4.

Admission of acceptance by counsel of record

5.02 (2) A written admission or confirmation on the record of acceptance of service by counsel of record is sufficient proof of service and need not be verified by affidavit.

Personal service and service on counsel of record

5.02(3) Personal service or service on counsel or on an employee in counsel's office is effective at the time the document is left with the accused or with counsel or with an employee in counsel's office.

Service by registered mail

5.02(4) Where a document is served by registered mail, service is effective on the date the document was delivered to the person to be served as shown on the confirmation of delivery receipt obtained from Canada Post Corporation.

Service by certified mail

5.02(5) Where a document is served by certified mail, service is effective on the date the document was delivered to the person to be served as shown on the receipt card obtained from the Canada Post Corporation.

Service by fax

5.02(6) A document that is served by fax shall include a cover page indicating

- (a) the sender's name, address and telephone number;
- (b) the name of the lawyer, or, if an accused is not represented by counsel, the name of the accused, to be served;
- (c) the date of the transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the fax number of the sender; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

5.02 (7) Proof of service by fax may be made by attaching an affidavit of service of the person who sent the document to the fax confirmation sheet.

5.02 (8) Where service is made under this clause by fax, after 4:00 p.m., or on a holiday, it shall be deemed to have been made on the next day that is not a holiday.

5.02 (9) A document of 16 or more pages, inclusive of the cover page and the backsheets, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served gives prior consent.

Service by e-mail

5.02(10) The e-mail message to which a document served is attached shall include:

- (a) the sender's name;
- (b) the date and time of transmission; and
- (c) the name and telephone number of the person to contact in the event of transmission problems.

5.02(11) Where service is made by e-mail after 4 pm or is a holiday, it shall be deemed to have been made on the next day that is not a holiday.

5.02(12) Service under this clause is effective only if the person being served provides, by e-mail to the sender, an acceptance of service and the date of the acceptance, and where the e-mail acceptance is received between 5 p.m. and midnight, it shall be deemed to have been made on the following day. Proof of service by e-mail may be made by attaching an affidavit of service sworn or affirmed by a person who sent the e-mail, to a copy of the acceptance of service by e-mail.

PRACTICE DIRECTIVE 6

APPLICATIONS

APPLICATION OF THE PRACTICE DIRECTIVE

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

6.01 (2) Practice Directives 6.01 to 6.11 apply to all proceedings commenced by a Notice of Application, except where otherwise expressly provided in the Practice Directives, by statute, or as ordered by a judge of the court.

6.01(3) Applications to which these Practice Directives apply include pre-trial applications, trial applications and third party applications. For greater certainty:

- (a) Pre-trial applications include:
 - (i) procedural applications, such as applications for adjournments or withdrawal of counsel of record;
 - (ii) preparatory applications for material necessary to proceed to trial, such as disclosure, access to private records, or release of exhibits for testing;
 - (iii) pre-trial applications, such as those for severance, particulars or the appointment or removal of counsel; and
 - (iv) applications for a stay of proceedings for unreasonable delay under section 11(b) of the *Charter* to be brought before the assigned trial judge.
- (b) Trial applications include:
 - (i) *Charter* applications challenging the constitutionality of legislation, seeking a stay of proceedings (apart from under section 11(b)) or seeking the exclusion of evidence; and
 - (ii) complex evidentiary applications, such as for the admission of similar act evidence, evidence of a complainant's prior sexual activity, or hearsay evidence.
- (c) Third party applications include:
 - (i) any application made by witnesses or the media.

CONTENT OF APPLICATION

- 6.02** Every Notice of Application shall include:
- (a) the name of the applicant(s);
 - (b) the name of the respondent(s);
 - (c) the place of hearing;
 - (d) the date and time of the first appearance of the hearing;
 - (e) the precise relief sought;
 - (f) the name of the judge seized of the matter, if applicable;
 - (g) the grounds to be argued, including a reference to any statutory provision or Practice Directive to be relied upon;

- (h) a reference to the documentary, affidavit and other evidence to be relied on at the hearing of the application; and
- (i) 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.

SCHEDULING OF HEARING OF APPLICATIONS

6.03(1) A Notice of Application filed in Winnipeg shall first be returnable in motions court, unless otherwise instructed by a judge of the court (the “first returnable date”)

6.03(2) A date for the hearing of an application in Winnipeg shall be set on its first appearance in motions court, or at such later date as agreed by counsel or directed by a judge of the court (the “hearing date”).

6.03(3) A Notice of Application filed in a court office other than Winnipeg shall first be returnable on any regularly scheduled court sitting of that court office, or circuit point, as the case may be, and shall be heard on such date as a judge may direct.

FILING AND SERVICE

Minimum notice period for filing and serving of applicant’s material

6.04 (1) Except where otherwise expressly provided by legislation or these Practice Directives, or as ordered by a judge of the court:

- (i) a Notice of Application shall be first filed in court and then served on all respondents, or their counsel, at least 2 days before the first returnable date of the application and not less than 30 days before the hearing date of the application; and
- (ii) all supporting documents shall be first filed with the court and then served on all respondents, or their counsel, at least 14 days before the hearing date of the application.

Minimum period for filing and serving responding material

6.04(2) Except where otherwise expressly provided by legislation or these Practice Directives, or as ordered by a judge of the court, any material a respondent intends to rely on in response to a notice of application, shall be filed in the court office, and served on the applicant, or the applicant’s counsel, at least 7 days before the hearing date of the application.

Filing documents for hearing of an application in a circuit court

6.04(3) When a matter is scheduled to be heard at one of the circuit courts as set out in Schedule 1 to these Practice Directives, serviced by a court office in a location where the judge scheduled to hear the application is not ordinarily located, the applicant’s documents and the respondent’s materials, may be filed at an alternate court office other than the court office that services that circuit point, with the prior permission of a judge of the court.

MATERIALS

6.05(1) The materials filed in support of a Notice of Application pursuant to this Practice Directive shall include:

- (a) a photocopy of the charge(s) contained in the relevant Information(s);
- (b) a transcript of any proceedings which are material to the determination of the issue raised in the Notice of Application;
- (c) any affidavit material to be relied on;
- (d) copies of authorities to be relied on with the relevant portions identified; and
- (e) any other documents that are necessary for the hearing and determination of the issue(s) raised in the Notice of Application.

6.05(2) Where a respondent seeks to rely on material that has not been filed by the applicant pursuant to Practice Directive 6.05(1), the respondent shall file such materials in accordance with Practice Directive 6.04(2).

WRITTEN SUBMISSIONS

6.06 A judge of the court may require that counsel file written submissions relative to a Notice of Application.

EVIDENCE ON APPLICATIONS

General Practice Directive

6.07(1) Evidence on an application may be given by affidavit in Form 3 and in accordance with Practice Directive 4.03, unless the *Code* or other applicable statute or a judge of the court by order provides otherwise.

6.07(2) Subject to the *Code* or any other applicable statute or rule of common law, a witness may be examined or cross-examined, including on his or her affidavit filed in support of, or in opposition to a Notice of Application, on the hearing of an application and with leave of the presiding judge.

6.07(3) 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

6.08 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

6.09 Where an applicant intends to abandon the application, the applicant shall file, and serve on all parties, a Notice of Abandonment in Form 5, signed by the counsel of record in the application, or by the applicant.

DISMISSAL OF APPLICATIONS

Dismissal for failure to appear

6.10(1) An applicant who fails to appear at the hearing of an application shall be deemed to have abandoned the application, and the application shall be dismissed, unless the court orders otherwise.

Summary dismissal of application

6.10(2) Upon application by a respondent that a Notice of Application is frivolous or vexatious or 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.

Summary dismissal not final

6.10 (3) 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.

Applicable to *Charter* matters

6.10(4) Practice Directives 6.10(1),(2) and (3) are applicable to applications described in Practice Directives 9 and 10.

HEARING OF APPLICATIONS BY TELECONFERENCE

6.11 An application may be heard by teleconference where a judge of the court so orders in advance.

PRACTICE DIRECTIVE 7

REMOVAL OR WITHDRAWAL AS COUNSEL OF RECORD

APPLICATION OF THE PRACTICE DIRECTIVE

7.01 This Practice Directive applies to contested applications made by counsel of record for an accused who is seeking to withdraw as counsel of record and to contested applications to remove counsel as counsel of record. It does not apply to uncontested applications to withdraw as counsel of record, nor to counsel appearing as legal aid duty counsel who has identified himself or herself as such to the court.

MATERIALS FOR USE ON APPLICATION

7.02 The Notice of Application shall be accompanied by an affidavit sworn by or on behalf of the applicant, but the applicant may not appear as counsel at any hearing in which his or her affidavit has been filed in support of the application.

AFFIDAVIT BY OR ON BEHALF OF THE APPLICANT

7.03 The affidavit by or on behalf of the applicant on an application to withdraw as counsel or to have counsel removed shall contain:

- (a) particulars of the proceeding in respect of which the application is made, including a statement of the date upon which any trial, preliminary inquiry or sentencing hearing is scheduled to commence and its length;
- (b) particulars of any prior applications, whether on behalf of the accused or the prosecutor, including, where available, transcripts of proceedings in regard to such applications;
- (c) where the application is made by counsel acting on behalf of an accused, a statement of facts material to a determination of the application, including a statement of the reasons why the order sought should be given;
- (d) where the application is made by or on behalf of the prosecutor, a statement of facts material to a determination of the application, including a statement of the reasons why the order sought should be given;
- (e) whether an adjournment of the trial, preliminary inquiry or sentencing hearing is likely or will be required if the order requested is granted;
- (f) where applicable, the identity of new counsel;
- (g) whether the accused is in custody, and if so, the place of detention; and
- (h) whether there are co-accused whose matter is set for the same hearing date, and whether any such co-accused are in custody, and if so, his or her place of detention.

SERVICE OF APPLICATION TO WITHDRAW AS COUNSEL OF RECORD

7.04 Where counsel for an accused seeks to withdraw as counsel of record, the Notice of Application and the supporting materials shall be served on:

- (a) the accused in a manner set out in Practice Directive 5.01(2), or in such manner as a judge of the court orders;
- (b) the Attorney General of Manitoba and/or the Attorney General of Canada, as the case may be, in accordance with Practice Directive 5.01(3); and
- (c) where there are co-accused whose matter(s) is set for the same hearing date, counsel for such co-accused in accordance with Practice Directive 5.01(1). In the event a co-accused is unrepresented by counsel, service shall be effected in accordance with Practice Directive 5.01(2) or in such manner as a judge of the court orders.

PRACTICE DIRECTIVE 8
APPLICATIONS FOR ADJOURNMENT

APPLICATION OF THE PRACTICE DIRECTIVE

8.01 This Practice Directive applies to contested applications made by a party who is seeking to adjourn a proceeding.

8.02 The court may adjourn a trial or a preliminary inquiry to such time and place and upon such terms as the court deems appropriate after considering all relevant factors.

FORM OF APPLICATION

8.03 Requests for adjournments pursuant to this Practice Directive shall be commenced by Notice of Application in Form 1.

PRACTICE DIRECTIVE 9
EXCLUSION OF EVIDENCE/CHARTER S.24(2)

APPLICATION OF THE PRACTICE DIRECTIVE

9.01 This Practice Directive applies in any proceeding where an accused seeks the remedy of exclusion of evidence pursuant to s.24 (2) of the *Charter*.

FORM OF APPLICATION

9.02 In any proceeding in which Practice Directive 9 applies, the accused shall file in the appropriate court office a Notice of Application in Form 1.

CONTENTS OF APPLICATION

9.03 The Notice of Application shall state:

- (a) the name of the applicant;
- (b) the name of the respondent;
- (c) the trial date, if applicable;
- (d) the time and place of the first returnable date;
- (e) the name of the judge seized of the matter, if applicable;
- (f) the right or freedom that is alleged to be infringed or denied;
- (g) the anticipated evidence sought to be excluded;
- (h) the grounds to be relied upon, including a concise statement of the manner in which the right or freedom is alleged to be infringed or denied and the anticipated evidence and principles of law to be relied upon;
- (i) a reference to the documentary, affidavit and other evidence to be relied upon at the hearing of the application, as well as any statutory provisions; and
- (j) whether an order is required abridging or extending the time for service for filing of the Notice of Application or supporting materials required under Practice Directive 3.02.

MATERIALS FOR USE ON APPLICATION

9.04(1) The materials filed in support of a Notice of Application pursuant to this Practice Directive shall include:

- (a) a photocopy of the charge(s) contained in the relevant Information(s);
- (b) a transcript of any proceedings which are material to the determination of the exclusionary issue raised in the Notice of Application;
- (c) any affidavit material to be relied on;
- (d) copies of authorities to be relied on with the relevant portions identified;
- (e) any other documents that are necessary for the hearing and determination of the exclusionary issue raised in the Notice of Application; and
- (f) any written submissions in respect of the allegations made and the grounds relied upon.

9.04(2) Where a respondent seeks to rely on material that has not been filed by the applicant pursuant to Practice Directive 9.04(1), the respondent shall file and serve such materials, in accordance with Practice Directive 6.04(2).

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/or
 - (b) makes an application for a remedy under s. 24(1) of the *Charter*.

FORM OF APPLICATION

- 10.02** In any case to which Practice Directive 10 applies, the accused shall file in the appropriate court office a Notice of Application in Form 1.

CONTENTS OF APPLICATION

- 10.03** The Notice of Application shall contain
- (a) the name of the applicant;
 - (b) the name of the respondent;
 - (c) the trial date, if applicable;
 - (d) the time and place of the first returnable date;
 - (e) the name of the judge who is seized of the matter if applicable;
 - (f) the law or legislative provision that is challenged;
 - (g) the right or freedom alleged to be infringed or denied;
 - (h) a concise statement of the constitutional issue to be raised;
 - (i) any statutory or other constitutional provision to be relied upon;
 - (j) the precise relief sought;
 - (k) a reference to the documentary, affidavit and other evidence to be used at the hearing of the application; and
 - (l) whether an order is required abridging or extending the time for service for filing of the Notice of Application or supporting materials required under Practice Directive 3.02.

MATERIALS FOR USE ON APPLICATION

- 10.04(1)** Materials filed in support of a Notice of Application pursuant to this Practice Directive shall include :
- (a) a photocopy of the charge(s) contained in the relevant Information(s);
 - (b) transcripts of any earlier proceedings that are material to the determination of the constitutional issue raised;
 - (c) copies of any documents intended to be relied upon at the hearing of the application;
 - (d) any affidavit evidence upon which the applicant intends to rely at hearing;
 - (e) copies of authorities to be relied on with the relevant portions identified; and

- (f) any written submissions in respect of the allegations made and the grounds relied upon.

10.04(2) Where a respondent seeks to rely upon material that has not been filed by the applicant pursuant to Practice Directive 10.04(1), the respondent shall file and serve such materials, in accordance with Practice Directive 6.04(2).

SERVICE AND FILING

- 10.05** The Notice of Application, along with supporting materials shall be served 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 Public Prosecutions Service of Canada.

PRACTICE DIRECTIVE 11

JUDICIAL CASE MANAGEMENT CONFERENCES

APPLICATION OF THE PRACTICE DIRECTIVE

11.01(1) For any preliminary inquiry, trial or hearing, either at the request of a party or on the court's own motion, a judge of the court may direct that a Judicial Case Management Conference ("JCMC") be held.

11.01(2) The JCMC shall be held at such time and date, and in such place and manner, including by teleconference, as a judge of the court may direct.

11.01(3) JCMCs include all hearings and conferences as described in sections 625.1 and 536.4 of the *Code*.

11.01(4) The prosecutor and counsel for the accused, who is each to be fully briefed in respect of the issues to be discussed at the JCMC, shall be present at the conference, unless otherwise ordered by a judge, and in the case of an accused who is not represented by counsel, the accused shall be present.

11.01(5) Prior to attending a JCMC, the prosecutor and counsel for the accused may each, or shall upon the direction of the presiding case management judge, prepare a brief to be provided to the case management judge and to opposing counsel.

THE JUDICIAL CASE MANAGEMENT CONFERENCE HEARING

General nature of JCMC

11.02(1) Unless otherwise ordered by a judge, or agreed to by the parties, a JCMC shall be an informal meeting conducted in chambers at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any further proceedings that may take place.

11.02(2) The case management judge will not preside at a sentencing hearing pertaining to any charges that were the subject of the JCMC unless all parties request that the case management judge preside and the case management judge agrees to preside.

Specific inquiries to be made

11.02(3) Without restricting the generality of Practice Directive 11.02(1), a case management judge may inquire as to:

- (a) the extent of disclosure made by a party and any requests for disclosure by a party;
- (b) the nature and particulars of any applications to be made before or at the outset of the proceeding including an:

- (i) application to quash an Information;
- (ii) application to change the venue or adjourn the hearing;
- (iii) application to challenge the sufficiency of the Information, to order particulars or to amend the Information or any count therein;
- (iv) application to sever the trial of any count(s) or accused from the trial(s) of another or others of them; and
- (v) application to determine the fitness of an accused to stand trial;
- (c) the identification and simplification of such issues as remain to be contested at the preliminary inquiry or trial;
- (d) the identification of witnesses to be heard at the preliminary inquiry or trial, taking into account the witnesses' needs and circumstances;
- (e) the possibility of obtaining admissions and agreements so as to facilitate an expeditious, fair and just determination of the proceedings;
- (f) the estimated duration of the preliminary inquiry or trial;
- (g) the advisability of fixing the hearing date, in the event that a hearing date has not been set for any reason;
- (h) any application to be made at the preliminary inquiry pursuant to s. 540(7) of the *Code*;
- (i) any other matter that may assist in promoting a fair, just and expeditious hearing; and
- (j) the possibility of resolving the matter before preliminary inquiry or trial.

JCMC orders

11.02(4)

At the conclusion of a JCMC, the case management judge may:

- (a) adjourn and order a continuation of the conference, and in conjunction with the parties and the trial coordinator, fix the date, time, and place for the conference to be continued;
- (b) give a party directions regarding further steps to be taken or information to be obtained and set dates for such directions to be met;
- (c) if he or she deems it necessary, cancel, abridge or add to scheduled preliminary inquiry or trial dates to ensure that the time set aside is appropriate and to facilitate compliance with the Practice Directives; and
- (d) order that certain preliminary motions be heard in advance of the preliminary inquiry or trial date, and, in conjunction with the parties and the trial coordinator, fix dates for the motion to be heard in advance by the assigned preliminary inquiry or trial judge.

JCMC Report

11.02(5)

At the conclusion of a JCMC, the case management judge shall prepare a Case Management Conference Report. The Report shall include any admissions of fact agreed to by the parties, any agreements reached by the parties, and, in the case of a JCMC conducted pursuant to s. 536.4 of the *Code*, the information required by s. 536.3 of the *Code*. A copy of the Report shall be provided to each of the parties and shall be provided to the preliminary inquiry or trial judge, together with any relevant documents.

APPENDIX OF FORMS

FORM 1: Notice of Application

Court File No. _____

PROVINCIAL COURT
(SPECIFY COURT LOCATION)

BETWEEN:

HER MAJESTY THE QUEEN
(indicate whether applicant or respondent)

-and-

(SPECIFY NAME OF ACCUSED)
(indicate whether applicant or respondent)

NOTICE OF APPLICATION

APPLICATION HEARING:

Application First Returnable Date and Time:
Court Address:
Courtroom Number:

THE CHARGES TO WHICH THIS APPLICATION RELATE ARE: *(provide sufficient information to identify the charges to which this application relates, (for example: assault, breach of probation, dd/mm/yy), which may include attaching a photocopy of the relevant Information(s)*

THE RELIEF SOUGHT IS: *(Briefly state why you are bringing the application. For example, “This is an application for an order adjourning the trial”; “This is an application for an order requiring the Crown to disclose specified documents”; “This is an application for an order staying the charge for delay”; or “This is an application for an order abridging (or extending) the time for service of the Notice of Application”)*

THE GROUNDS FOR THIS APPLICATION ARE: *(Briefly list the grounds you rely on in support of this application. For example, “I require an adjournment because I am scheduled to have a medical operation the day the trial is scheduled to start”; “The disclosure provided by the Crown does not include the police notes taken at the scene”; “There has been unreasonable delay since the laying of the charge that has caused the accused prejudice”; or “My witness is unavailable on the scheduled trial date”).*

DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR THE APPLICATION:

STATUTORY PROVISIONS OR PRACTICE DIRECTIVES UPON WHICH THE APPLICANT RELIES ARE: *(if applicable)*

IN SUPPORT OF THIS APPLICATION, THE APPLICANT ANTICIPATES RELYING ON THE FOLLOWING MATERIALS: *(specify which are applicable by putting a check mark beside the item(s))*

- Transcripts
- Affidavit(s)
- Case law
- Oral Testimony *(list witnesses to be called at hearing of application)*
- Other *(please specify)*

THE APPLICANT MAY BE SERVED WITH DOCUMENTS IN RESPONSE TO THIS APPLICATION IN ACCORDANCE WITH PRACTICE DIRECTIVE 5 AS FOLLOWS: *(specify address, including fax number and/or e-mail address if applicable)*

JUDGE _____ IS SEIZED OF THE PROCEEDINGS TO WHICH THIS APPLICATION RELATES *(if applicable)*

THE TRIAL OR PRELIMINARY INQUIRY OF THIS MATTER IS SET TO PROCEED ON THE FOLLOWING DATE(S): *(if applicable)*

Dated at _____ this _____ day of _____, 20

Signature of applicant or counsel
(set out name and address, phone number, fax number and/or e-mail address if applicable)

FORM 2: Designation of Counsel

Court File No. _____

PROVINCIAL COURT
(SPECIFY COURT LOCATION)

BETWEEN:

HER MAJESTY THE QUEEN

-and-

(SPECIFY NAME OF ACCUSED)

DESIGNATION OF COUNSEL
(s. 650.01 CC)

I, _____ (name of accused) of _____ (address of accused) state that my lawyer is
_____ (lawyer's name, address and phone number).

I have asked my lawyer to represent me, appear for me and provide legal services for me on the following charges:

Information Number(s)	Charge(s) (in Words)	Date of Offence(s)
1.		
2.		

I understand my lawyer cannot appear for me in my absence on any other charges except those listed above, unless I sign a further Designation of Counsel form for those charges.

I understand that I MUST attend Court in person for my trial if I decide to enter a plea of not guilty or on the day of any guilty plea for any of my charges, and on any day when I will be sentenced (unless the Judge gives permission for me to be absent); if I have personal appearances as a condition of my recognizance, on all court dates; and even if I do not have personal appearances as a condition of my recognizance, on any day the Judge orders me to attend Court.

I also understand that I MUST keep in touch with my lawyer until these charges are dealt with in Court, and appear before the Court on any date requested by the Court, and I agree that notice of such date to my lawyer is notice to me of that date. This means I must tell my lawyer immediately if I change my address or telephone number and I will make sure that my lawyer always has a way to contact me. I have been given a copy of this Designation of Counsel.

Dated this _____ day of _____ 20__ at _____

Signature of Accused

Signature of Lawyer (Designated Counsel)

FORM 3: Affidavit

Court File No. _____

PROVINCIAL COURT
(SPECIFY COURT LOCATION)

BETWEEN:

HER MAJESTY THE QUEEN

-and-

(SPECIFY NAME OF ACCUSED)

AFFIDAVIT

I, _____ (full name of deponent, of the (City, Town, etc.) of _____, in the Province
of _____ (set out the deponent’s capacity),

MAKE OATH AND SAY (or AFFIRM):

1. (Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)

SWORN (or affirmed) before me at the (City, Town, etc.) of)
_____ in the Province of _____ on)
_____ (date).)
)
)
)
_____) (deponent’s signature)

Commissioner for Oaths, Barrister and Solicitor, or Notary)
Public)

FORM 4: Affidavit of Service

Court File No. _____

PROVINCIAL COURT
(SPECIFY COURT LOCATION)

BETWEEN.

HER MAJESTY THE QUEEN

-and-

(SPECIFY NAME OF ACCUSED)

AFFIDAVIT OF SERVICE

I, _____ (full name of deponent), of the _____ (City, Town, etc.) of _____, in the Province of Manitoba, (set out the deponent’s capacity), _____ MAKE OATH AND SAY (or AFFIRM):

[Identify manner and proof of service by checking the relevant box and completing the accompanying portion of the affidavit]

Personal Service:

1. On _____ (date), at _____ (time), I served _____ (identify person served), with the _____ (identify document(s) served) by leaving a copy with him (or her) at _____ (address where service was made).

2. I was able to identify the person by means of _____ (state the means by which the person’s identity was ascertained).

Personal Service on a corporation or counsel for a corporation:

1. On _____ (date), at _____ (time), I served _____ (identify corporation served) with the _____ (identify document(s) served) by leaving a copy of the document(s) with _____ (identify person by name and title) at _____ (address at which service was made).

2. I was able to identify the person by means of _____ (state the means by which the person’s identity was ascertained).

Service by registered mail:

1. On _____ (date), I sent a copy of the _____ (identify documents served) to _____ (identify person served) by registered mail with Canada Post Corporation item # _____ attached to

FORM 5: Notice of Abandonment

Court File No. _____

PROVINCIAL COURT
(SPECIFY COURT LOCATION)

BETWEEN.

HER MAJESTY THE QUEEN

(Applicant or Respondent)

-and-

(SPECIFY NAME OF ACCUSED)

(Applicant or Respondent)

NOTICE OF ABANDONMENT

TAKE NOTICE that the Applicant hereby wholly abandons his (or her) application for (indicate the nature of the order and relief sought).

DATED at _____ this _____ day of _____ 20_____.

(Signature of applicant or counsel acting on behalf of that person) (name and address)

FORM 6: Case Management Report**CASE MANAGEMENT CONFERENCE REPORT**1. **Presiding Judge:**2. **Date of Conference:**3. **Name of Accused:**4. **Name of Defence Counsel:****Name of Crown Counsel:**5. **Charges:**6. **Elections made and pleas entered:**

Crown election -

Defence election -

 This is a Youth Court matter. An adult sentence is being sought.**Proceeding on one or more Informations?****Any objection?**7. **Disclosure:**

Outstanding disclosure:

Deadline for disclosure:

8. **Preliminary Matters:****By prosecution:**

Canvass potential for resolution; amendments, new Information; problems re admissibility of evidence

By defence: Motion for *Charter* relief: delay, abuse of process Motion to quash information Severance of accused or counts Any constitutional challenge to legislation (notice) Problems re admissibility of evidence Competence of accused Other9. **Admitted facts or agreements:****(a) Identify type of admission/agreement:** Admission/agreement reached pursuant to Code s. 655 – trial for an Indictable offence: [Note: admissions and agreements reached are not binding on counsel; R. v. Derksen (1999), 140 C.C.C. (3d) 184 Sask. C.A.]

Admission/agreement reached pursuant to Code s. 536.4(2) – preliminary inquiry: [Note: the presiding judge must record any admissions of fact or agreements reached by the parties. The significance of a 536.4 agreement/admission is that per s. 537(1)(i), the preliminary inquiry judge may regulate the course of the inquiry in accordance with any admission of fact or agreement recorded under subsection 536.4(2).]

Agreement between prosecutor and accused to limit scope of preliminary inquiry pursuant to Code s. 536.5 – preliminary inquiry:
 [Note: this box will be checked when counsel have i) reached an agreement to limit the scope of the preliminary hearing, with no 536.4 hearing having taken place i.e. in the course of a case management conference, **AND** ii) want that agreement recorded pursuant to s. 536.5.
 A 536.5 agreement must be filed with the court. The filing of the agreement will normally be accomplished by counsel completing Form ‘B’ at the resolution conference; the original will be placed on the court pocket by support staff, and a copy forwarded to the preliminary inquiry judge along with the case management conference memo. The significance of a 536.5 agreement is that per s. 537(1)(i), the preliminary inquiry judge may regulate the course of the inquiry in accordance with any agreement under s. 536.5.

(b) Identify Agreements/Admissions of Fact

- Jurisdiction
- Continuity of exhibits
- Identity of accused
- Ownership and/or value of property/amount of damage
- Validity of court documents (recognizance, probation order)
- Documentary evidence/notice
- Medical evidence
- Agreement to limit scope of preliminary inquiry _____
- s. 540(7) evidence to be tendered, including any witness statements
 - By consent subject to ruling of preliminary hearing inquiry judge. Nature of evidence:
 - Contested motion to be held prior to preliminary hearing
 - Contested motion materials to be filed by _____ (date)
 - Other:
- Copy of statement(s) re proposed s. 540(7) evidence disclosed?
 - yes
 - No – Deadline for disclosure _____

10.

If matter is a preliminary inquiry and Forms A and B have not been filed:

List of issues on which the accused wants evidence to be given at the inquiry (s. 536.3(a) of the *Code*):

List of witnesses that the accused wants to hear at the inquiry (s. 536.3(b) of the *Code*):

11.

Issue of criminal responsibility:

- NCR hearing to be held
- NCR hearing not to be held

12.

Victim Impact:

- The complainant has been advised of the opportunity to prepare a s. 722(1) statement
- A s. 722(1) impact statement has been prepared
- A s. 722(1) impact statement has not been prepared
- A s. 722(1) statement has been disclosed
- A s. 722(1) statement will be disclosed by _____
- A s. 486(3) publication ban will be sought?

13.

Issues in Dispute (factual and legal):

Defences:

- Drunkenness
- Provocation
- Alibi
- Lack of intent
- Self-defence
- Automatism
- Accident

14. Are there any confessions and/or oral statements to be tendered in evidence?

Will a voir dire be necessary?

On what basis:

- Voluntariness
- Charter* breach
- Other

Will evidence be called by the defence on voir dire?

Number of witnesses and/or estimate of time:

15. Will a voir dire be required for any other evidentiary issues?

- s. 8 search and seizure
- other *Charter* application
- similar acts
- hearsay
- third party records
- privilege
 - will any claim of privilege be asserted in respect of any evidence proposed for introduction?
 - by the prosecutor
 - by the defence
 - upon what basis
- will a list of authorities be provided?

16. Any child witnesses or witnesses whose competency is challenged?

Any witness who requires an interpreter?

- No
- Yes
 - If yes, for what language? _____

Language of trial:

- English
- French

Expert witnesses:

Number of expert witnesses:

The opinion of a qualified expert will be tendered for admission:

- by prosecutor
- by defence

Upon what issue(s) will such evidence be tendered?

Is the admissibility of the proposed evidence contested?

- No
- Yes

If yes, upon what basis? _____
 Admission to the qualifications of the expert to be called:
 by prosecutor by defence

17. Estimated number of Crown witnesses/time:

Estimated number of defence witnesses, if defence is called/time:

18. Special Needs:

- Special security requirements
- Size of courtroom
- Computer needs
- Special equipment (i.e. video equipment) Please note if counsel are intending to use equipment in the courtroom, it is counsel’s responsibility to ensure that the equipment is available for use in this case.
- Interpreter (to be arranged by counsel)
- French language services
- Nature of exhibits

19. Is the case ready to be set for preliminary inquiry or trial?

- No
 - Yes
- If yes, number of days approved by Judge _____

20. Hearing dates set or reserved to be confirmed by counsel with the Trial Coordinator’s Office:

21. Has the matter been resolved?

- No
 - Yes
- Case Management Judge **cannot** preside at the sentencing.

22. Is a further Case Management Conference required?

- No
- Yes, a further Conference has been scheduled for

23. Is a remand authorized when the matter next appears in two weeks?

- No
 - Yes
- Please indicate the purpose of the remand and the date by which the purpose must be fulfilled for tracking by the Case Management Coordinator

24. Additional comments?

Judge

Copy to:

SCHEDULE 1: Provincial Court Offices**Circuit Points Served by Court Office****BRANDON**

Provincial Court
100 - 1104 Princess Avenue
Brandon, Manitoba R7A 0P9
Phone: (204) 726-7114
Fax: (204) 726- 6995

Boissevain, Sioux Valley

DAUPHIN

Provincial Court
114 River Avenue West
Dauphin, Manitoba R7N 0J7
Phone: (204) 622- 2192
Fax: (204) 622-2099

Camperville, Roblin

FLIN FLON

Provincial Court
104 – 143 Main Street
Flin Flon, Manitoba R8A 1K2
Phone: (204) 687–1670
Fax: (204) 687-1673

Cranberry Portage, Snow Lake

MINNEDOSA

Provincial Court
70 – 3rd Avenue South West
Box 414
Minnedosa, Manitoba R0J 1E0
Phone: (204) 867- 4722
Fax: (204) 867- 4720

Rosburn, Russell, Waywayseecappo

MORDEN

Provincial Court
301 Wardrop Street
Morden, Manitoba R6M 1X6
Phone: (204) 822- 2882
Fax: (204) 822- 2883

PORTAGE LA PRAIRIE

Provincial Court
B28 - 25 Tupper Street North
Portage la Prairie, Manitoba R1N 3K1
Phone: (204) 239- 3337
Fax: (204) 239-3402

Sandy Bay

SELKIRK

Provincial Court
101 – 235 Eaton Avenue
Selkirk, Manitoba R1A 0W7
Phone: (204) 785- 5077
Fax: (204) 785-5125

Beausejour; Berens River; Bloodvein; Emerson; Garden Hill; Gimli; Little Grand Rapids; Pauingassi; Pine Falls/Powerview; Poplar River; St. Martin; St. Theresa Point

STEINBACH

Provincial Court
Unit A, 284 Reimer Avenue
Steinbach, Manitoba R5G 0R5
Phone: (204) 346- 6070
Fax: (204) 346- 6072

St. Pierre-Jolys

SWAN RIVER

Provincial Court
201 – 4th Avenue South
Box 206
Swan River, Manitoba R0L 1Z0
Phone: (204) 734-2252
Fax: (204) 734-9544

THE PAS

Provincial Court
300 – 3rd Street East
Box 1259
The Pas, Manitoba R9A 1L2
Phone: (204) 627-8420
Fax: (204) 623-6528

Easterville, Grand Rapids, Moose Lake, Pukatawagan

THOMPSON

Provincial Court
59 Elizabeth Road
Box 34
Thompson, Manitoba R8N 1X4
Phone: (204) 677- 6761
Fax: (204) 677- 6584

Brochet, Churchill, Cross Lake, Gillam, God's Lake
Narrows, God's River, Lac Brochet, Leaf Rapids, Lnn
Lake, Nelson House, Norway House, Oxford House,
Shamattawa, South Indian Lake, Split Lake**VIRDEN**

Provincial Court
232 Wellington Street West
Box 1478
Virden, Manitoba R0M 2C0
Phone: (204) 748- 4288
Fax: (204) 748-2980

WINNIPEG

Provincial Court
Law Courts Building
Main Floor, 408 York Avenue
Winnipeg, Manitoba R3C 0P9
Phone: (204) 945-3454
Fax: (204) 948-4677

Altona, Arborg, Ashern, Fisher Branch, Lundar, Peguis,
Stonewall