

# **Protocol Regarding Administrative Management Adult of Criminal Cases Pre- Hearing (“Thompson Protocol”)**

## **THOMPSON COURT CENTRE**

**The Thompson Protocol is subject to change. It is expected that over time 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..... 1

APPLICATION OF PROTOCOL..... 1

NON-DISCRETIONARY ..... 2

ADMINISTRATIVE TIMELINES ..... 3

    First in Custody Appearances (First Appearance)..... 3

    In Custody Docket ..... 4

    Timeline..... 4

    Expiration of timeline on CCD Docket..... 5

    Out of Custody Dockets ..... 5

    Timeline..... 5

    Counselling/Diversion Programs..... 6

    Self-represented accused ..... 6

    Expiration of timeline on JJP Docket..... 7

GENERAL ..... 7

    Change of Counsel Timeline Amendment ..... 7

    Pre-Sentence Reports (PSR)..... 7

    Preliminary Inquiry & Trial Dates..... 7

    Case Management ..... 8

    Non Appearance by Accused ..... 9

    Non Appearance by Counsel..... 9

    Re-Arrest ..... 9

    Guilty Pleas..... 10

    Seniority of Counsel ..... 10

    Legal Aid Administrative Applications ..... 10

Appendix A – Crown Stay of Proceedings Form..... 12

Appendix B – Designated Offences..... 13

Appendix C – Order of Precedence..... 14

# PRE-TRIAL COORDINATION PROTOCOL

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## **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 in a manner which 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. The Thompson Protocol outlines where and for how long matters will appear from first appearance to the time of setting the matter for hearing with the goal of moving matters effectively through the criminal system in a timely manner.

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**

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

All administrative matters relating to these cases will be managed by a Judicial Justice of the Peace (JJP) or a Custody Coordinator (CC) (who has limited jurisdiction as a Staff Justice of the Peace). The Thompson Protocol is the document from which the CCs obtain their authority and direction with respect to these administrative matters. The CCs have no discretion to deviate from the Thompson Protocol unless expressly noted in the Protocol. The CCs will deal with in custody matters until those matters reach timeline. The JJPs will deal with both in custody and out of custody matters until those matters reach timeline. The JJPs have a broader jurisdiction than set out herein. The JJPs jurisdiction includes, and is not limited to, conducting contested bail hearings, issuing warrants and other authorizations. The Thompson Protocol addresses the administrative tasks herein, and does not diminish the authority and jurisdiction of JJPs generally.

## **NON-DISCRETIONARY**

Administrative management as set out in this Protocol, by the JJPs and CCs is essential for successful processing of cases through the criminal justice system. The JJPs and CCs 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, firearms reports, etc. If issues regarding disclosure cannot be resolved, counsel should request a case management conference with a judge or file a notice of motion.
- 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;

Additionally, in order to perform the administrative tasks in this Protocol, the JJPs and CCs have the authority to perform the following tasks:

- 1) Adjourn matters as required, provided the matter has not exceeded its timeline and the matter does not involve an allegation of breach of a Conditional Sentence Order;
- 2) Endorse a stay of proceedings upon being provided with a completed Crown Stay of Proceedings Form (see attached Appendix "A"); or upon being advised by Crown counsel.
- 3) Issue, cancel or hold warrants, including a decision whether the warrant should be endorsed or unendorsed, after hearing submissions from counsel;
- 4) Allow counsel to withdraw in the following circumstances:
  - a) 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
  - b) if the JJP or CC issues a warrant for arrest for the accused and counsel asks to be removed as counsel of record;
  - c) if a warrant has issued for the accused and counsel does not apply to withdraw at the time the warrant is issued but after the accused is apprehended, the accused and a new counsel now advise the Court that new counsel has been retained, the previously noted counsel can apply and be noted as withdrawn and the new lawyer will be noted as counsel of record;
  - d) if the accused advises they intend to represent them self and does not intend to make further efforts to retain counsel.

## **ADMINISTRATIVE TIMELINES**

The JJPs and CCs, who are bound by certain administrative timelines, will oversee the Custody Coordination Docket (CCD) and the Judicial Justice of the Peace Dockets (JJP Dockets). Between the time a charge is laid and a matter is ready to proceed before a judge for a meaningful event, the matter will appear on a JJP or CC Docket unless the matter involves an allegation of breach of a Conditional Sentence Order in which case a date will be set before the appropriate judge with the assistance of the Trial Coordinators Office.

The JJP and CC Coordinators have no authority to deviate from the timelines established by the Thompson Protocol unless expressly noted in this Protocol.

### **First in Custody Appearances (First Appearance)**

For an accused that has not had their first appearance before a JJP, they will have their first appearance before a judge on a 9:30 a.m. docket in Courtroom B or C as assigned. If the accused is without counsel on the first appearance, and they do not wish to apply for bail, they will be remanded to the CCD. The CC will monitor the matter and if no counsel is appointed the matter will be returned to the Judges 9:30 a.m. list, without TCO confirmation, on the third day following the first appearance for a personal appearance by the accused. If the accused does not wish to apply for bail or if bail is denied, the matter will be returned to the CCD to be dealt with in accordance with the timelines herein.

If the accused has counsel and counsel of record does not appear on a matter, and the accused does not wish to apply for bail, the Judge will transfer the matter to the CCD and the CC will monitor the matter. If counsel has not contacted the CC with instructions, the matter will be returned to the Judges 9:30 a.m. list, without TCO confirmation, on the third day following the first appearance for a personal appearance by the accused. If the accused does not wish to apply for bail or if bail is denied, the matter will be returned to the CCD to be dealt with in accordance with the timelines herein.

If the accused is self-represented after the three day time limit and has appeared before a judge, and does not wish to apply for bail or bail is denied, the matter will be remanded to the CCD where it will remain until a date is set for sentencing, preliminary inquiry or trial. The CC may direct the setting of a case management conference before a judge. If the matter is at timeline, and the self-represented accused wishes to set a preliminary inquiry or trial date, the preliminary inquiry or trial date should be set and a case management conference should also be set, well in advance of and no later than two months prior to the preliminary inquiry or the trial and the matter should be remanded to the next sitting JJP docket to be monitored. If the matter is not yet at timeline, the case management conference can be set and the matter can remain on the CCD until timeline.

If the self-represented person wishes to apply for Legal Aid, the matter can remain on the CCD until timeline at which point it will be remanded to the next sitting JJP docket.

### **In Custody Docket**

Following the First Appearance, where the accused has been denied bail, does not intend to apply for bail or the matter has appeared in Bail Court without a bail application, the matter will next appear as follows:

- 1) Provincial in custody adult matters – will be remanded to the Custody Coordination Docket (CCD). The CCD is an administrative docket held each Friday (or Thursday if the Friday is a holiday). The first attendance on the CCD docket will be two weeks after the First Appearance (not the week after the First Appearance but the week after that). Counsel are required to contact the CCD coordinator by email no later than noon each Friday to address their matters appearing on that docket. The CCD Coordinator will be monitoring the CCD, ready to hear from counsel all through the week, so it is not necessary to wait until the day of the Administrative docket to contact CCD. If there is no contact from counsel by noon on the Friday, their matter(s) will be placed on the JJP docket the following Tuesday for judicial review. Once a matter is remanded to the CCD, the name of the assigned Crown will be provided at the first appearance on the docket.

### **Timeline**

The CC will monitor all matters where the accused is represented by counsel for 4 weeks from the date the matter first appears on the CCD, unless the accused is charged with a designated offence as indicated in Appendix “B”. On all designated offences, a timeline of 16 weeks from the date of arrest will apply.

If the timeline for a matter is reached on the CCD, the matter must be set for sentencing, preliminary inquiry or trial prior to the expiration of the timeline, unless one of the following exceptions applies:

- a) The accused is co-accused with an accused who is in custody and the Crown consents to keeping the matters together;
- b) The drug that is the subject matter of the charges is being tested at the request of the Crown;
- c) The Crown consents to an adjournment past the timeline;
- d) The accused is actively seeking to retain counsel and the Crown consents to further remands or the accused is co-accused with an accused who is actively seeking to retain counsel and the Crown consents to further remands.

- e) The matter is transferred to the JJP docket for review in accordance with this Protocol.

If one of the above exceptions applies, the matter will be transferred to the JJP Docket for monitoring.

- 2) Federal adult in custody matters – will be remanded to the Federal Adult docket held every 4th Friday at 10:00 a.m. in Courtroom B. On all federal offences, a timeline of 16 weeks from the date of arrest will apply.

The accused or counsel can bring forward any matter on the CCD for a bail hearing, or disposition by arranging a time with the Trial Coordinator.

### **Expiration of timeline on CCD Docket**

Where all timelines have expired at the CCD and no date for preliminary hearing, trial or disposition has been arranged and set, matters will be remanded to the JJP docket 2 weeks hence. The appearance of the accused will be ordered unless a Designation of Counsel has been filed with the Court, in which case counsel are expected to appear. A disposition, trial or preliminary inquiry must be set within those two weeks and confirmed to the JJP. No further remands will be allowed.

### **Out of Custody Dockets**

The first appearance in Court on all out of custody matters will be 6 to 8 weeks after release or 3-4 weeks after released in bail court. If the matter is not disposed of at the first appearance, the matter will be remanded as follows:

- 1) Provincial adult matters - to a JJP docket which sits every 1st, 3rd and 4th Tuesday of the month in the Cafeteria in the Thompson Courthouse.
- 2) Federal Adult Matters- to a docket held every 4th Friday at 10:00AM. On all federal offences, a timeline of 16 weeks from the date of arrest will apply.
- 3) Diversion Matters - to a JJP dockets which sits every 1st, 3rd and 4th Tuesday of the month in the Cafeteria in the Thompson Courthouse

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

### **Timeline**

The JJP will monitor all matters for 6 weeks from the first appearance on the JJP docket unless the accused is charged with a designated offence as indicated in Appendix "B". On all designated offences, a timeline of 16 weeks from the date of arrest will apply. If it is not a

designated offence, a timeline of six weeks from the date of first appearance applies to the matters on the JJP Docket. By that time, the matters must be set down for preliminary hearing, trial or disposition.

### **Counselling/Diversion Programs**

If the Crown confirms a matter will be referred to a counselling/diversion program, and defence accepts the diversion position, the Judge or CC will adjourn the matter to the next sitting JJP docket for monitoring. The following timelines 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 JJP is satisfied that the matter is progressing and the Crown agrees, diversion matters may remain on the JJP docket.

If the JJP or Crown is not satisfied that the matter is progressing or diversion has been unsuccessful, the matter will be remanded one month on the JJP docket to set the matter for preliminary hearing, trial or disposition within the month.

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 JJP on or before the next remand date or the JJP can endorse the stay of proceedings at the direction of the Crown on the record.

### **Self-represented accused**

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

- 1) The JJP will advise the accused of the right to counsel;
- 2) The accused will meet with a Legal Aid representative and the JJP will grant a remand to another JJP Docket to allow processing of the Legal Aid application;
- 3) If the accused wants to retain private bar counsel, the JJP will remand the matter to a future JJP Docket for counsel to be consulted;



- 4) 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 the file or the appropriate Supervising Senior Crown Attorney. The matter will be remanded to a further JJP Docket in order for the accused to contact the assigned Crown Attorney to obtain the Crown's position and begin discussions.
- 5) Federal self represented adult matters - to a docket held every 4th Friday at 10:00 AM in Courtroom B.

All proceedings will be digitally monitored.

### **Expiration of timeline on JJP Docket**

Once a matter has reached the end of its timeline on the JJP docket, the matter must be scheduled for preliminary hearing, trial or disposition. For matters requiring one day or less where the accused is in custody the date must not be more than 8 months in the future. For matters requiring one day or less where the accused is out of custody the date must not be more than 12 months in the future. If the matter is being prosecuted by the Public Prosecution Service of Canada, the date must not be more than 12 months in the future.

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 JJP. The JJP may only grant one consent timeline extension. 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.

## **GENERAL**

### **Change of Counsel Timeline Amendment**

The CC or JJP will grant one timeline extension of up to a maximum of 4 weeks from the date new counsel goes on the record where there has been a new assignment of counsel.

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

When a PSR is ordered, the Judge will set a due date for the report and remand the matter to the next sitting of the JJP Docket. Counsel will confirm a date with TCO and confirm the Judges availability on that date if the judge is seized. The matter will then be scheduled before the Judge on the confirmed date.

### **Preliminary Inquiry & Trial Dates**

When a matter is being set for preliminary inquiry or trial and the accused is out of custody, a trial slip or hearing acknowledgement signed by the accused must be filed with the

Court prior at the time the date is set unless counsel has previously filed a Designation of Counsel Form in which case a trial slip or hearing acknowledgement is not required. A hearing will not be set until the proper forms are filed.

If the accused is in custody when the date is set the remand warrant will ensure the attendance of the accused and a signed designation of counsel, trial slip or hearing acknowledgement is not required.

If the accused is self-represented when the date for preliminary inquiry or trial is set the JJP or CC (depending where the matter is within its timeline) will advise the accused of the following:

- 1) A Case Management Conference presided over by a judge must be arranged at least two months prior to the preliminary hearing or trial, by the accused contacting the Crown to review the Crown's case and the nature of the proceedings including what the Court will expect from the accused;
- 2) Steps must be taken immediately to retain counsel if that is what is intended to ensure that counsel will be available on the date scheduled for preliminary inquiry or trial;
- 3) The accused will not be entitled to an adjournment on the day of the preliminary inquiry or trial because he or she wishes to retain counsel and has not yet done so or because counsel of choice is not available; and
- 4) On the date scheduled for the preliminary inquiry or trial the accused must appear and be prepared to proceed to hearing. This requires that the accused bring the disclosure that has been provided by the Crown and arrange for the attendance of any witnesses that s/he wishes to have testify who are not being called by the Crown.

## **Case Management**

Any Case Management Conference must occur at least two months prior to the date of the trial or preliminary inquiry except with the permission of the Case Management Judge. If a CMC has not been set by the time the trial or preliminary hearing is booked, then counsel must arrange the CMC at the time of booking the trial or preliminary hearing.

If the Crown is unable to estimate the amount of time required for preliminary hearing or trial they must notify the JJP at least four weeks in advance of the timeline so that a Case Management Conference may be arranged, before timeline expires and before a date for hearing is set. The CMC must be held at least two months before the preliminary hearing or trial is scheduled to begin.

## **Non Appearance by Accused**

If an accused does not appear at the JJP 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 JJP Docket. If the accused still does not appear (when personal appearances required) or their counsel does not appear on the next remand, the JJP may issue a warrant for the arrest of the accused.

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 (administratively) on a matter that is on the CCD the CC will adjourn the matter to the next appropriately designated CCD and send a letter or email directing counsel to appear on the next court date with a copy to the Chief Judge and the Regional Associate Chief Judge. If there is no appearance on the subsequent date, the JJP will refer the matter to the Chief Judge and the Regional Associate Chief Judge and adjourn the matter a further two weeks.

If counsel does not appear on a matter that is on the JJP out of custody docket, the JJP will adjourn the matter two weeks and send a letter or email directing counsel to appear on the next court date with a copy to the Chief Judge and the Regional Associate Chief Judge. If there is no appearance on the subsequent date, the JJP will refer the matter to the Chief Judge and the Regional Associate Chief Judge and adjourn the matter a further two weeks unless the timeline or remand limit has expired.

If the timeline is expired or will expire by the next remand the JJP will adjourn the matter as follows:

- The matter will be adjourned two weeks to the next JJP Docket and the JJP will order that the accused personally appear with counsel. If counsel does not appear with a signed Designation of Counsel Form, trial slip, Undertaking by Counsel or hearing acknowledgement for a pre-arranged date, is not setting the matter for disposition and the accused is not present, the JJP will issue a warrant for the accused;

## **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 CCD 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 JJP or CC when a matter is ready for sentencing and whether an in person appearance is required along with the reason, otherwise the appearance will be by video. The matter will be adjourned to the next JJP Docket or CCD while counsel confirm the disposition date with TCO at which time it will be remanded to the disposition Court. 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 or if otherwise directed by the sentencing Judge.

### *Out of Custody*

Counsel will advise the JJP when a matter is ready for sentencing. The matter will be adjourned to the next JJP docket once counsel confirm the disposition date with TCO at which time it will be remanded to the disposition Court. When an unrepresented person wishes to plead guilty on his first Court appearance and the Crown agrees to a same day disposition, the Judge will ensure that the accused is aware of all the consequences of such an action.

## **Seniority of Counsel**

Priority of hearing will be granted to Senior Counsel in accordance with section 84(1) of the Legal Profession Act (see Appendix “C”). Custody dispositions arranged in advance for a video appearance will be on the basis of AM or PM time slots. Prior to the sentencing date, the AM or PM time slot may be adjusted based on agreement between Crown and Defence and subject to availability. On the sentencing date, the AM or PM time slot may only be adjusted with the prior permission of the presiding judge.

## **Legal Aid Administrative Applications**

When an accused applies for Legal Aid, in custody matters will be placed on the CCD and then at timeline will be transferred to the JJP docket. Out of custody matters will appear on the JJP Dockets. Adjournments will be granted where accused are being prosecuted by Manitoba

Justice; and where staff lawyers and private bar lawyers are appearing until any outstanding issues regarding the Legal Aid certificate have been addressed.

Individuals who are in custody will be transported to Court or appear by video unless the appearance is waived.

Cases where Legal Aid applications are pending will be dealt with as follows:

- 1) When an individual advises the CC that he or she is applying for LA the matter will be adjourned two weeks for the application to be filed.
- 2) If the application has not been filed after two weeks then the matter will be adjourned to the JJP Docket.
- 3) If 2 weeks after the application has been filed, the Legal Aid paralegal advises the CC that the application is not complete the matter is to be adjourned to the JJP Docket.
- 4) When Legal Aid refuses the application or cancels an existing certificate the matter will be adjourned to the JJP Docket to review the options (appeal, UM, set a date).

If Legal Aid appoints counsel then the JJP or CC will set a timeline and adjourn the matter to appear before the JJP. Before setting the timeline, the JJP will consider the history of the matter, how long the matter has already been on the CC or JJP dockets and the stage of the proceedings. Any new timeline set, should be as close to the original timeline as reasonably possible.

## Appendix A – Crown Stay of Proceedings Form

<b>TO BE COMPLETED BY CROWN</b>	<b>CROWN REQUEST - STAY OF PROCEEDINGS</b>	
	<b>DATE:</b> <b>NAME OF ACCUSED:</b> <b>DATE OF BIRTH:</b> <b>POLICE REPORT #:</b> <b>CHARGES:</b> <b>COURT POCKET #:</b>	
	<b>STATUS OF CASE:</b> <b>CURRENT REMAND DATE:</b> <b>Courtroom:</b> <div style="text-align: center; margin-top: 10px;"> <input type="checkbox"/> <b>408 YORK AVENUE</b>    <b>OR</b>  <input type="checkbox"/> </div>	
	<b>I HEREBY DIRECT THAT A STAY OF PROCEEDINGS BE ENTERED FORTHWITH, ON THE RECORD OF PROCEEDINGS OF THE ABOVE NOTED CHARGES.</b> <b>CROWN:</b> <b>SIGNATURE:</b> _____  Defence Counsel: E-mail address: _____ or Telephone # _____	
<b>CROWN CONTACT:</b>	<b>PHONE NUMBER:</b>	

## Appendix B – Designated Offences

### Designated Offences

Homicides and fatalities  
Child Pornography  
Attempt Murder  
Aggravated sexual assault & sexual assault 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  
Mischief endangering life  
Arson  
CDSA Project files as identified by the Federal Crown

# Appendix C – 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.