

REGIONAL ADULT PRE-TRIAL COORDINATION PROTOCOL

- Brandon, Dauphin, Portage
La Prairie, The Pas -

The Provincial Court of Manitoba

This 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 for the most updated version of the Protocol.

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REGIONAL ADULT 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 pre-trial administrative processing of all criminal cases will be conducted by Pre-Trial Coordinators (PTCs). This process allows the Crown and Defence to identify, discuss and resolve administrative issues without an appearance before a Judge.

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

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

In 2016, the Supreme Court of Canada in *R. v. Jordan* said all justice system participants share responsibility for advancing matters through the justice system within a reasonable period of time. The administrative timelines in this Protocol ensure timely access to justice and the efficient progress of cases through the justice system.

APPLICATION OF PROTOCOL

This Protocol applies to all adult criminal prosecutions appearing in the Provincial Court in Brandon, Dauphin, Portage La Prairie and The Pas. At this time, the Protocol will not apply to circuits in those judicial districts.

Pre-Trial Coordinators, who are Staff Justices of the Peace, manage all administrative matters relating to these cases within certain timelines. This Protocol is the document from which the PTCs obtain their authority and direction.

PRE-TRIAL COORDINATION

Case management by PTCs is essential for successful processing of cases through the criminal justice system. The PTCs are mandated to carry out 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) Disclosure is provided within a reasonable time;
- 4) Any consent bail variations (except for conditions relating to offences set out in s. 515(4.1) and (4.2) of the *Criminal Code*) have been addressed;
- 5) The Crown has reviewed the evidence and provided its position;
- 6) Meaningful discussions between counsel have occurred;
- 7) Counselling or diversion issues have been addressed; and
- 8) Same-day dispositions are facilitated when possible.

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

- 1) Adjourn matters as required;
- 2) Endorse a stay of proceedings upon being provided with a completed Crown Stay of Proceedings Form (Appendix A), or upon the request being made on the record;
- 3) Issue, cancel or hold warrants, including a decision whether the warrant should be endorsed or unendorsed, after considering submissions from counsel;
- 4) Allow counsel to withdraw;
- 5) Order forfeiture of items seized with the consent of both Crown and defence;
- 6) Adjourn a matter to the Court of King's Bench Assignment Court; and
- 7) Amend Informations.

IN AND OUT OF CUSTODY MATTERS

All in and out of custody adult criminal matters will first appear on a Judge's docket.

In Custody Matters

If, on the first appearance, the in custody accused:

- Has been denied bail,
- Does not intend to apply for bail, or
- Is without counsel, wishes to retain counsel for the purpose of a bail application, and consents to an adjournment longer than three clear days (s. 516(1) of the *Criminal Code*),
- Has not otherwise dealt with their matter,

the matter will be remanded to the PTC docket the following week. In other circumstances, and at the Judge's discretion, the matter can be remanded directly to a Judge's Docket for hearing.

Out of Custody Matters

Out of custody matters that are not dealt with on the first appearance or remanded directly to a Judge's docket for hearing will be remanded to the PTC docket the following week.

PTC DOCKET

The PTC docket is an administrative docket and is not a court of record, except when it sits to deal with matters that have not been addressed on the administrative docket, issue warrants or address submissions from counsel where matters are not being dealt with by consent.

One week in advance, the PTC will provide a list of adult accused appearing on the next PTC docket to the Crown, Legal Aid and Defence Counsel. All counsel are to provide consent written instructions by no later than 2 p.m., 2 working days before the PTC docket (the "cut off time"). All matters that have not been addressed in writing by the cut off time will appear on the record at a designated time in a courtroom. Counsel who have not addressed their matters by the cut off time are to appear in person at the designated time and courtroom. Any unresolved issues between counsel will be remanded to the next PTC docket for discussions or for counsel to file an application before a Judge.

Self-represented accused, including those who are pending Legal Aid approval, must appear in person, or by teleconference or video if they are in custody.

The PTC dockets will be held as follows:

Judicial Centre	PTC docket	Cut Off Date
Brandon	1 st and 3 rd Tuesday 9 am CR101	Friday 2 pm, 2 working days prior to on the record court
Dauphin	2 nd and 4 th Tuesday 9:30 am CR102	Friday 2 pm, 2 working days prior to on the record court
Portage La Prairie	1 st and 3 rd Friday 9 am Provincial Court	Wednesday 2 pm, 2 working days prior to on the record court
The Pas	2 nd and 4 th Friday 9 am CR C	Wednesday 2 pm, 2 working days prior to on the record court

TIMELINES

The PTC will monitor all matters as follows:

- For in custody, non designated matters, 6 weeks from the date of first appearance;
- For out of custody, non designated matters, 8 weeks from the date of first appearance;
- For designated matters (Appendix B), 16 weeks.

Once counsel is on record, all matters will be remanded to timeline unless otherwise directed by a Judge or PTC. It is expected that a date for disposition, preliminary inquiry, trial or other hearing will be set within these timelines. Accused must appear in person, by video or telephone when setting a hearing date unless a Designation of Counsel (Appendix C) or Undertaking by Counsel (Appendix D) has been filed with the Court.

TIMELINE EXCEPTIONS

The PTC only has discretion to diverge from the administrative timelines in this Protocol in the following circumstances.

1. Consent (one time only)

- All counsel consent to an adjournment past the timeline up to a maximum of one month.
- In co-accused matters where:

- The accused or co-accused is actively seeking to retain counsel and the Crown consents to further remands.
- The co-accused is in custody and the Crown consents to keeping the matters together; the timeline that applies to the in-custody co-accused may apply to the out-of-custody co-accused.

2. Diversion Program

If the Crown confirms a matter will be referred to a diversion program and the accused agrees, the following guidelines will apply from the date of referral:

- An initial one month remand to confirm enrolment in the program;
- A second one month remand may be permitted if enrolment has not been confirmed and the Crown does not oppose the remand; and
- 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 PTC docket until diversion is complete. Once the Crown is provided with confirmation of successful completion of the program, the Crown may file a Stay of Proceedings Request Form with the PTC, or speak to it on the record. If the PTC or Crown is not satisfied that the matter is progressing or diversion has been unsuccessful, the matter will be remanded back to a Judge's docket.

3. Problem Solving Court Application

- The accused has applied for a Problem Solving Court such as Drug Treatment Court and is awaiting acceptance.
- The accused is co-accused with an accused who is applying for or has been accepted into a Problem Solving Court and the Crown consents to adjourning the matter to another PTC docket.

4. 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. If the Judge does not set the sentencing date and

adjourns the matter to a PTC docket, a sentencing date pre-approved by the Trial Coordinator must be set when the matter next appears before the PTC.

5. Judge is Seized

A matter waiting for a Judge who is seized to set a date may appear on the PTC docket until the date is confirmed by the Trial Coordinator.

6. Timeline Amendment for Change of Counsel

Where there has been a new assignment of defence counsel, the PTC may grant one timeline extension of up to one month from the date new counsel goes on the record.

7. Re-Arrest

Breach & Fail to Appear Charges

When an accused is arrested on a breach of a release order or fail to appear charge and subsequently appears on the PTC docket without new substantive charges, the timeline will be re-started, at the point it was at immediately prior to the arrest or warrant issuing. If the accused had reached the end of the timeline at the time of arrest or warrant issuing, one remand of up to one month 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 new timeline for that charge. The timeline on any existing charges will not be affected by the new timeline, unless the Crown agrees to amend the old timeline to be the same as that of the new charges.

SELF-REPRESENTED ACCUSED

If the accused wishes to retain counsel or apply for Legal Aid, the PTC will remand the matter to the next PTC docket. If, at the next remand, counsel has not yet been retained or appointed, further remands will be allowed until it is confirmed counsel will not be representing the accused. The accused will then be considered self-represented and remanded as indicated in the below paragraph.

If the accused does not wish to obtain counsel, they will be provided with the name and phone number of the assigned Crown attorney and/or the general number for Prosecutions. The accused will be granted a remand to the next PTC docket to contact the assigned Crown Attorney, obtain disclosure and the Crown's position, and begin plea discussions. After the initial remand,

the self-represented accused will be remanded to appear at each PTC docket to monitor the setting of a date for disposition, preliminary inquiry or trial.

If a self-represented accused wishes to enter a guilty plea and proceed to disposition, the matter will be remanded to a Judge's docket on a date that the PTC orders in consultation with the accused and the Crown.

If a self-represented accused wishes to set a trial or preliminary inquiry date, the PTC will direct that a Case Management Conference (CMC) be set and will adjourn the matter to the CMC date. After the CMC, the matter will be remanded back to the PTC docket until a hearing date is set as directed by the CMC Judge.

SETTING FOR TRIAL OR PRELIMINARY INQUIRY

When a matter is to be set down for trial or preliminary inquiry, a date has been previously arranged, and one of the following documents is filed with the Court, no appearance by the accused or counsel is required:

- A trial slip or hearing acknowledgement signed by the accused,
- A Designation of Counsel Form, or
- An Undertaking by Counsel.

If one of the above forms is not received by the PTC by the end of the PTC docket and counsel does not appear, the PTC will remand the matter two weeks for the form to be filed or counsel and the accused to appear.

Case Management

A Case Management Conference (CMC) must be arranged with the Trial Coordinator prior to setting a hearing date in the following circumstances:

- 1) Where counsel are seeking a hearing date of more than one day;
- 2) For sexually related offences where a s. 276 or 278 *Criminal Code* application is anticipated;
- 3) For offences where *Charter* applications are anticipated;
- 4) At the discretion of the Judge, on their own accord or on application by either the accused or the Crown; or
- 5) The accused is self-represented.

When a matter is ready to proceed to preliminary hearing or trial and a CMC is not required, counsel must provide a Trial Coordination Form (Appendix F) to the Trial Coordinator before a date is provided to counsel.

SETTING FOR DISPOSITION

For matters expected to exceed thirty minutes of Court time, counsel will advise the PTC when the matter is ready for sentencing and a date has been agreed upon and confirmed by TCO. Provided a Designation of Counsel or an Undertaking by Counsel has been filed, counsel and the accused need not attend to set the date. The PTC will adjourn the matter to the date requested. Matters of thirty minutes or less can be remanded directly to a Judge's docket from the PTC docket.

When a self-represented person wishes to plead guilty and the Crown agrees to a same day disposition, the PTC will ensure the matter is transferred to a same day Judge's docket for sentencing if there is time available.

NON-APPEARANCE

By Accused

An accused is required to appear personally in the following circumstances:

- When they are representing themselves;
- When they have a personal appearance requirement; or
- When they are required to appear personally until counsel is on the record.

If an accused is required to appear and does not appear at the PTC docket, the non-appearance will be noted and the matter may be remanded to the next PTC docket.

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.

If the accused does not appear on the subsequent remand date and the Crown requests a warrant, the PTC may issue the warrant at the Crown's request if defence counsel does not oppose it issuing. If the PTC is not prepared to issue the warrant or if defence counsel opposes, the matter will be remanded to appear before a Judge.

By Counsel

If a Designation of Counsel form has not been filed, and counsel does not appear, the PTC will adjourn the matter to the next PTC docket. At the next remand, if counsel does not appear the PTC may issue a warrant for the arrest of the accused.

WITHDRAWAL OR CHANGE OF COUNSEL

Counsel may withdraw from the record on the PTC docket in the following circumstances:

- If the accused and new counsel advise the PTC:
 - That new counsel has been retained, and goes on the record, and
 - That new counsel is available for any scheduled trial or preliminary inquiry.
- If the PTC issues a warrant for arrest for the accused and counsel asks to be removed as counsel of record;
- If the accused advises they intend to represent themselves and does not intend to make further efforts to retain counsel.

If an application to the PTC for counsel to withdraw is contested, counsel must file a Notice of Application in accordance with Practice Directive 7 or seek leave of the Court to dispense with said filing.

APPENDIX A – Crown Stay of Proceedings Form

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

APPENDIX B – 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
Mischief endangering life
Arson
CDSA Project files as identified by the Federal Crown

APPENDIX C – Designation of Counsel Form

Court File No. _____

PROVINCIAL COURT

BETWEEN:

HIS MAJESTY THE KING

(applicant or respondent)

-and-

(applicant or respondent)

DESIGNATION OF COUNSEL FORM

I, _____ (name of accused) of _____ (address of accused) of _____

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.		
3.		

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 release order, on all court dates; and even if I do not have personal appearances as a condition of my release order, 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)

I attest I reviewed the contents of the Designation of Counsel with _____
(accused's name) and he/she has affirmed it to be true and correct in lieu of his/her signature.

(law firm, address, postal code)

Per :

Lawyer's Name (Designated Counsel for the Accused)

APPENDIX D – Undertaking by Counsel

UNDERTAKING BY COUNSEL / ENGAGEMENT DE L'AVOCAT(E) (Trial / Preliminary Inquiry Date) / (Date du procès/de l'enquête préliminaire)

I / Je _____ state: / déclare
soussigné(e) _____ :
(Name of Counsel / Nom de l'avocat(e))

That I am counsel of record for / Que je suis avocat(e) au
dossier de _____
(Name of Client / Nom du (de la) client(e))

That I have: / Que j'ai, selon le cas :

- Received an email (copy attached) and I am satisfied it was sent by my client; /
reçu un courriel (copie jointe) et que je suis convaincu(e) qu'il a été envoyé par mon (ma) client(e);
- Received a text message (copy attached) and I am satisfied it was sent by my client; or /
reçu un message texte (copie jointe) et que je suis convaincu(e) qu'il a été envoyé par mon (ma) client(e);
- Spoken to a person I am satisfied is my client on /
parlé à une personne qui, j'en suis convaincu(e), est mon (ma) client(e) le

_____ at / at _____ .
(Date/Date) (Time / Heure)

And that my client has confirmed that he/she is aware that the trial/preliminary inquiry is scheduled for / Et que mon
(ma) client(e) a confirmé qu'il (elle) est au courant que le procès/l'enquête préliminaire est prévu(e) le

_____ at / at _____
(Date/Date) (Time / Heure)

IN PROVINCIAL COURT / À LA COUR PROVINCIALE

Court Room / dans la Salle
d'audience _____

- 408 York Avenue, Winnipeg, Manitoba / 408, avenue York, Winnipeg (Manitoba) 945-3454
-

And that he/she is required to attend Court for the hearing of the following charges and advise me of any change to
his/her contact information. / et qu'il (elle) est requis(e) de se présenter à la Cour pour l'audition des accusations
indiquées ci-dessous et de m'aviser de tout changement à ses coordonnées.

Information Number(s) / Numéro(s) de dénonciation	Charge(s) / Accusation(s)
--	------------------------------

- 1.
- 2.
- 3.
- 4.

Date / Date

Signature of Counsel of Record / Signature de l'avocat(e) au
dossier

APPENDIX E – Order of Precedence

[The Legal Profession Act, C.C.S.M. c. L107](#)

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;
- (g) other lawyers, according to seniority of their registration in the rolls.

APPENDIX F – Trial Coordination Form

ACCUSED:

CHARGES:

IN CUSTODY: Yes No

DEFENCE COUNSEL: CROWN COUNSEL:

ELECTIONS

OUTSTANDING DISCLOSURE:

Date to be provided by:

ISSUES IN DISPUTE:

CROWN WITNESSES (including Names):

Civilian adult:

Children:

Police:

Expert:

OF DEFENCE WITNESSES:

INTERPRETER REQUIRED LANGUAGE

AGREEMENTS:

Date: Jurisdiction: Identification (as known):

Court order:

Photographs:

Ownership of property: Loss: Damage:

Medical records:

Reports:

Qualifications of expert:

Other:

MOTIONS NOT REQUIRING CMC:

715.1 (video statement)

486.1 (support person)

486.2 (remote testimony)

(behind screen)

ESTIMATE OF TIME REQUIRED:

Crown:

Defence:

Total:

Special Equipment or Courtroom: Details:

CROWN: _____ COUNSEL FOR ACCUSED: _____

COPY OF FORM PROVIDED TO OPPOSING COUNSEL