

Court of Queen’s Bench Criminal Proceeding Rules

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Forms

Court of Queen's Bench Criminal Proceeding Rules

Part 1 General Principles

Object, Application and Interpretation

1(1) These Rules are intended to facilitate the just determination of criminal proceedings in Alberta, and must be construed in a liberal and practical manner to secure the fair and expeditious resolution of the proceedings in which they are applied.

(2) Unless otherwise specified by an enactment or these Rules, these Rules apply to any criminal or summary conviction appeal proceeding.

(3) None of these Rules limits any jurisdiction or authority of the Court or a judge unless the Rule expressly so provides.

Definitions

2(1) In these Rules,

“Clerk” means Clerk of the Court;

“Court” means the Court of Queen’s Bench of Alberta.

(2) In these Rules,

(a) where no definition is provided for a term used in these Rules, that term has the same meaning as in the *Criminal Code* or in the *Interpretation Act*, as the context requires; and

(b) a form with the prefix “CC” refers to a form authorized by the Court for the purpose of these Rules.

Exceptions, Exemptions and Substitutions

3(1) To implement and advance the purpose and intention of these Rules described in Rule 1 the Court may, subject to any specific provision of these Rules, make any order with respect to practice or procedure, or both, in a proceeding before the Court.

(2) Without limiting sub-Rule (1), and in addition to any specific authority the Court has under these Rules, the Court may, unless these Rules specifically provide otherwise, do one or more of the following:

(a) grant, refuse or dismiss an application or proceeding;

- (b) set aside any process exercised or purportedly exercised under these Rules that is
 - (i) contrary to law;
 - (ii) an abuse of process; or
 - (iii) for an improper purpose;
- (c) give orders or directions or make a ruling with respect to a proceeding, or a related matter;
- (d) make a ruling with respect to how or if these Rules apply in particular circumstances or to the practice or procedure under these Rules;
- (e) impose terms, conditions and time limits;
- (f) give consent, permission or approval;
- (g) give advice, including by providing guidance and making proposals, suggestions and recommendations;
- (h) adjourn all or any part of a proceeding, or extend or shorten the time for doing anything in the proceeding;
- (i) include any information in a judgment or order that the Court considers necessary.

Part 2 Applications

Division 1 Form and Contents of Applications

Form of application

4 Every application required to be made on notice must be made in Form CC 1, unless otherwise indicated in these Rules.

Place and time of application

5(1) An application made in accordance with Rule 4 must

- (a) be brought in the judicial centre where the criminal proceedings to which the application relates are being or are to be heard;

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- (b) specify a time and date at which it is anticipated the application will be heard; and
- (c) be filed with the Court at the applicable judicial centre.

(2) An application must be heard on a date and at a time fixed by the Court in the judicial centre where the application is to be heard, but if the application is time sensitive or emergent, it may be brought before the Court without notice for the sole purpose of scheduling dates for service and the hearing.

Supporting documents

6 At least 7 days before the date of the hearing, the applicant must provide the following to the Court and the persons referred to in Rule 7:

- (a) an affidavit, transcript, other evidence or detailed particulars of the anticipated evidence; and
- (b) a synopsis of the legal argument supporting the relief claimed.

Service of the application

7 The following persons must be served with the application and supporting documents:

- (a) every party to the proceedings; and
- (b) every person who could be directly affected by an order that may be made on the application.

Dismissal

8 If the applicant fails to appear at the hearing of the application, the Court may dismiss the application as having been abandoned.

Division 2

Applications for *Mandamus*, *Certiorari*, *Habeas Corpus* and *Prohibition*

Existing Rules

9 The *Rules Pursuant to Section 424 of the Criminal Code with Respect to Mandamus, Certiorari, Habeas Corpus and Prohibition* in Part 60 of the *Alberta Rules of Court*, Alta Reg 390/1968 apply to an application for an extraordinary remedy.

Division 3
Applications for Judicial Interim Release

Form of application and service

10(1) An application for judicial interim release or review of judicial interim release must be in Form CC 2.

(2) An application under sub-Rule (1) must be served on the respondent at least 2 days before the application is scheduled to be heard.

(3) An application for detention review commenced by notice from an institution must be in Form CC 3.

Date and time of hearing

11(1) A date and time for the hearing of the application must be obtained from the Court in the judicial centre where the trial is to take place or where the accused is in custody.

(2) On an application for detention review, the Court must advise the institution of the date and time for hearing and must provide a notice in Form CC 4 to the designated counsel or, if there is no counsel designated, to the institution for provision to the accused.

Division 4
Applications for a *Charter* Remedy

Form of application and service

12 An application for a remedy based on an alleged violation of an accused's rights under the *Canadian Charter of Rights and Freedoms* must be made in Form CC 1 and in accordance with Division 1, except that the application and supporting documents must be served on the parties and the Court 7 days prior to the pre-trial conference or 60 days before trial, whichever is earlier, or as directed by the Court.

Division 5
Applications for Challenge for Cause

Form of application and service

13 If the Crown or the accused wishes to challenge a juror pursuant to paragraph 638(1)(b) of the *Criminal Code*, for example, based on the personal characteristics of the accused or the accused's witnesses, prejudice about the nature of the offence, or prejudice arising from pre-trial publicity, the following procedure is to be followed:

- (a) written notice of the application for the challenge must be served on the prosecutor or the accused, as the case may be, and provided to the Court Coordinator in the judicial centre where the trial is scheduled to take place at least 60 days prior to the scheduled jury selection or a shorter period that the trial judge allows in the interests of justice;
- (b) the notice must set out the basis for the proposed challenge in accordance with section 639 and Form 41 of the *Criminal Code*;
- (c) on receipt of the written notice, the Court Coordinator must schedule a pre-trial conference with the trial judge, the prosecutor and the accused to resolve issues raised by the application.

Division 6

Applications for or in Relation to Authorizations and Warrants

Form of application

14 An application for or relating to an authorization, warrant or similar order is to be made in accordance with the authorizing statute or, if no procedure exists in the authorizing statute or there is no authorizing statute, in accordance with Division 1.

Supporting documents

15 If Division 1 applies to the application, the applicant must provide, in addition to the supporting documents required under Rule 6,

- (a) the relevant passages from the legal authorities relied on and the full citation for each of the authorities; and
- (b) a form of the order being sought.

Division 7

Applications to Restrict Publication or Access

Form of application

16 Division 1 applies to an application for the following orders:

- (a) a publication ban;
- (b) a partial sealing order;

- (c) an order preventing the identification of a witness, including the use of pseudonyms;
- (d) an order for an *in camera* hearing;
- (e) any other non-disclosure or access limiting order.

Exception

17 This Division does not apply to a publication ban or an order restricting access which is required by statute.

Form, filing and service

18 In addition to the requirements of Division 1 and any direction the Court makes respecting additional persons to be served, the applicant must file with the Clerk in the judicial centre in which the application is to be made

- (a) 3 paper copies of completed Form CC 5; and
- (b) a copy of completed Form CC 5 referred to in paragraph (a) in a format suitable for electronic distribution by the Clerk.

Notification

19(1) If the Clerk has a list of media organizations registered for electronic distribution, the Clerk must forward the filed electronic Form CC 5 referred to in Rule 18(b) to those media.

(2) The Clerk must post a copy of the filed Form CC 5 in a place reserved for giving public notice at the courthouse where the application is to be heard.

Part 3 Pre-trial Conferences

Division 1 Pre-trial Conferences Generally

Existing Rules

20 The *Alberta Court of Queen's Bench Rules Respecting Pre-Trial Conferences* (SI/86-79) apply to pre-trial conferences and are supplemented by the following Rules.

When required

21 A pre-trial conference must be held in a case to be tried by a judge and jury and in a case scheduled or anticipated to take at least 3 days unless

- (a) a case management justice has been appointed; or
- (b) a judge, on application, directs otherwise.

When conducted

22 The initial pre-trial conference must be held within 120 days of the filing of the indictment or the order committing the accused to stand trial, whichever occurs first.

Pre-trial conference location

23(1) A pre-trial conference must be conducted in the judicial centre where the proceeding is being prosecuted, unless otherwise ordered by a judge.

(2) A pre-trial conference is to be conducted in private chambers, but may be conducted in a courtroom if the pre-trial conference judge directs or counsel requests.

(3) A pre-trial conference involving an unrepresented accused must be conducted in a courtroom.

Presence of the accused

24(1) An accused person is not compelled to attend a pre-trial conference if the accused has filed a written designation of counsel in Form CC 6, or another filed document acceptable to the Court.

(2) Subject to sub-Rule (1), the accused must be present at all pre-trial conferences relating to his or her prosecution.

Additional pre-trial conferences

25(1) The pre-trial conference judge or another judge of the Court may direct that such further pre-trial conferences be held as are deemed necessary to promote a fair and expeditious trial or disposition of the proceeding.

(2) If practicable, any further pre-trial conference on the matter must be conducted by the initial pre-trial conference judge.

Division 2 Reports and Submissions

Submissions

26(1) Each party to a pre-trial conference must file with the Clerk in the appropriate judicial centre a submission in Form CC 7.

(2) The prosecutor must complete the pertinent parts of Form CC 7, file the form 2 weeks prior to the pre-trial conference with the Clerk in the appropriate judicial center and provide a copy of the form to every other party to the proceeding.

(3) The accused must complete the pertinent parts of Form CC 7, file the form one week prior to the pre-trial conference with the Clerk in the appropriate judicial centre, and provide a copy of the form to every other party to the proceeding.

Pre-trial report by a judge

27 The pre-trial conference judge must prepare a report in Form CC 7, which must be provided to each of the parties for their approval as to the content of the report within the period and on the conditions the pre-trial conference judge considers appropriate.

(2) The pre-trial conference judge must remove and destroy the page of the report relating to sentencing positions, and the remainder of the document must be filed with the Court but may not be accessed by the public unless otherwise ordered.

(3) A copy of the filed document must be provided to the trial judge.

Division 3 The Pre-trial Conference

Creation and access to record

28(1) A pre-trial conference conducted in a courtroom must be recorded but the proceedings must not be published, broadcast or transmitted in any way, except by order of the pre-trial conference judge.

(2) No transcript of any pre-trial conference referred to in sub-Rule (1) may be requested by anyone without notice to all parties and the prior written approval of the pre-trial conference judge.

(3) Where a transcript or recording has been requested under sub-Rule (2), no information contained in it may be published in any document or broadcast or used in any way without the approval of the pre-trial conference judge, on notice to all parties, and information respecting sentencing discussions or positions must not be published or disclosed in any way.

Discussions at pre-trial conference

29(1) Unless otherwise ordered by the pre-trial conference judge, all parties must be in a position to make commitments on issues reasonably anticipated to arise from the contents of the pre-trial submissions made by them.

(2) The pre-trial conference judge shall inquire about, discuss and make recommendations on any matter that could promote a fair and expeditious conduct of the proceeding.

(3) Without restricting the discretion of the pre-trial conference judge, the pre-trial conference judge may inquire about, discuss and make recommendations on the following:

- (a) the contents of the submissions made by counsel or unrepresented accused;
- (b) any issues that arise from the contents of the submissions;
- (c) the issues in dispute between the parties;
- (d) the possibility of making admissions of fact or other agreements about uncontested issues or the evidence of witnesses;
- (e) the simplification of issues that remain in controversy in the proceeding;
- (f) the resolution of any outstanding disclosure issues;
- (g) the nature and particulars of any pre-trial application under these Rules, including the following:
 - (i) the need to make orders about the notices of applications to be filed;
 - (ii) the setting of schedules for serving and filing notices of applications, records and other materials in support of pre-trial applications;
 - (iii) whether written submissions should be required for pre-trial applications and the schedule set for their filing and service;
 - (iv) whether evidence on pre-trial applications may be provided by agreed statements of fact, excerpts of transcripts, affidavits, “will states” or otherwise than by the testimony of witnesses;
- (h) the possibility of the Crown reducing the number of counts in the indictment to facilitate jury comprehension or otherwise promote a fair, just and expeditious trial;
- (i) the manner in which evidence may be presented at trial to facilitate jury comprehension;
- (j) whether any disturbing images or sound recordings which either party intends to put before a jury are necessary to prove its case;
- (k) the necessity for the assistance of interpreters for any accused or witness in the proceedings;
- (l) the necessity of any technological equipment to accommodate any witness, facilitate the introduction of evidence or jury comprehension of the evidence;

- (m) the estimated length of pre-trial applications and trial proceedings and the advisability of fixing a date for commencement of pre-trial applications and trial proceedings;
- (n) the scheduling of the witnesses to be called;
- (o) the appointment of a case management judge pursuant to sections 551.1 to 551.7 of the *Criminal Code*.

Resolution Issues

30(1) The pre-trial conference judge shall raise and discuss

- (a) the Crown's position on sentence before trial and after trial in the event of conviction, including the counts on which pleas of guilty would be sought, the credit to be given for pre-sentence custody or release on stringent terms, any corollary orders sought on conviction, and whether further proceedings would be taken on conviction; and
- (b) the position of counsel for each accused on sentence if a guilty plea is taken before trial, and on sentence if a trial is held and the accused is convicted.

(2) The pre-trial conference judge may express his or her opinion about the appropriateness of any proposed sentencing disposition based on the circumstances disclosed at the pre-trial conference.

Part 4 Case Management

Assignment

31 An application pursuant to sections 551.2 to 551.7 of the *Criminal Code* must be made in accordance with Part 2, Division 1 unless otherwise ordered by the case management justice or the joint hearing justice.

Part 5 Summary Conviction Appeals

Existing Rules

32 The *Court of Queen's Bench for Alberta Summary Conviction Appeal Rules* (SI/2012-39) apply with respect to summary conviction appeals.

FORMS

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