



## THE NUNAVUT COURT OF JUSTICE

### **PRACTICE DIRECTIVE #28**

### ***JURY PRACTICE IN NUNAVUT***

#### Explanatory Note:

Much time and money is expended by Court Services in preparing for a jury trial. Jury summonses must be served well in advance of the scheduled trial date. Community halls must be booked. Community life is disrupted. This is all thrown away in the event counsel for the Crown or Defence cannot be ready in time for a scheduled jury trial. Too many scheduled jury trials are collapsing on the date set for trial for this reason.

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#### 1. SECURING A TRIAL DATE

Unless an accused is self-represented, no date for a jury trial will be set unless or until counsel of record have been assigned for the trial and have committed to make themselves available for the proposed trial date. Absent extraordinary circumstances, a failure to assign counsel by either the Legal Services Board or the Director of Public Prosecutions will result in an adjournment to the next assignment court date. This delay will be attributable to the party who has failed to file a Confirmation of Assigned Counsel in Form 28A.

Once a Form 28A has been filed with the Court, assigned Counsel are bound to continue with the assignment unless or until they receive leave from the Court to withdraw. Should counsel withdraw from the record within 90 days of the scheduled trial date, the trial date will be cancelled and the resulting delay will be attributable to the side requiring a new assignment of counsel unless otherwise ordered by the Court.

## 2. THE PRE-HEARING CONFERENCE

Attendance at a Pre-Hearing Conference by assigned counsel is mandatory under section 625.1(2) of the Criminal Code. Assigned counsel will confirm their availability for the assigned Pre-Hearing Conference date in writing (or by email) to the trial coordinator. Counsel must do so within 14 days of receiving a Notice of Pre-Hearing Conference in Form 28B from the trial coordinator. The Pre-Hearing Conference will then be set no later than 30 days preceding the scheduled trial date by an order in Form 28C. Every effort will be made to schedule the Pre-Hearing Conference around counsel's pre existing court commitments. Counsel are expected to make the time and effort to properly prepare for, and to attend the Pre-Hearing Conference as scheduled by the Court through the trial coordinator.

Counsel of Record who fail without reasonable excuse to attend a Pre-Hearing Conference when ordered to do so or who fail unreasonably to confirm their availability for a Pre-Hearing Conference, risk losing the trial date at the discretion of the assigned Conference Judge. The resulting delay will be attributed to the side that failed to attend the Pre-Hearing Conference or failed to confirm their availability for the Pre-Hearing Conference. It is not an acceptable practice to send a proxy or agent who is not prepared to commit the client or Crown to positions in relation to anticipated legal or evidential issues to be discussed at the Pre-Hearing Conference.

## 3. THE JUDICIARY'S EXPECTATIONS OF COUNSEL ATTENDING A PRE-HEARING CONFERENCE

- a. Counsel who attend a Pre-Hearing Conference have an obligation to be thoroughly conversant with the file and the evidential or legal issues in dispute. It is not acceptable for counsel to attend a Pre-Hearing Conference unprepared. It is expected that managers will provide counsel with sufficient time to properly prepare for a Pre-Hearing Conference;
- b. Counsel should know whether all necessary disclosure obligations have been met. If disclosure has been requested and not received by the date set for the Pre-Hearing Conference, the scheduled trial date may be cancelled at the discretion of the Conference Judge;
- c. Counsel should know whether all material witnesses have been served with subpoenas and whether necessary travel arrangements for their respective witnesses have been made. This should all be done before the Pre-Hearing

Conference, not after. If subpoenas and or travel arrangements have not been made, the Conference Judge may, in his or her discretion cancel the scheduled trial date. The resulting delay will be attributable to the party who has failed to comply with this obligation;

- d. Counsel should know what if any pre-trial motions will be necessary before the trial can proceed. Any intended Charter motion must be filed in advance of the Pre-Hearing Conference, and counsel must be in a position to discuss when and how this motion can be heard in advance of jury selection pursuant to section 645(5) of the Criminal Code. Close attention must be given by counsel to the time estimates for the hearing of any pre-trial motions including any necessary voir dices. The Conference Judge may in his or her discretion impose deadlines for the filing of written argument or case authorities with respect to any intended pre-trial motions;
- e. Counsel should make every effort to complete any resolution discussions in advance of the Pre-Hearing Conference date. The Court expects assigned Crown counsel to be proactive and ensure that Defence Counsel is given a timely “best offer” so that Defence Counsel can canvass the offer with the client in anticipation of the Pre-Hearing Conference. Defence counsel is expected to canvas the possibility of re-election to a judge alone trial before the Pre-Hearing Conference. If counsel need to know who the assigned judge is in order to make an informed decision on the matter of re-election, this will be provided by the Trial Coordinator upon request.
- f. Counsel should meet with their respective client or complainant before the Pre-Hearing Conference. If necessary, this shall be done by telephone. Crown counsel in particular must be in a position to confirm the availability and or willingness of all critical witnesses to testify, or at least be in a position to discuss any reasonable evidential alternatives open to the Crown in the event the witness cannot be made available for trial. This cannot be done by simply reading the file. It is not an acceptable practice for Crown or Defence Counsel to wait until the weekend before the trial to have personal contact with critical witnesses or an accused. A “wait and see” attitude invites a last minute collapse of a trial.

This practice directive comes into force on February 1<sup>st</sup>, 2010.

Issued this 21<sup>st</sup> day of December 2009 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey