

HINTS AND TIPS FROM THE PROTHONOTARY - REGISTRAR

ANNETTE M. BOUCHER, Q.C.

June 22, 2009

COURT DOCKETS

Supreme Court Crownside in Halifax will be held on the following dates: June 25th, July 9th, 23rd, and August 6th and 20th, 2009.

Appearance Days will be held at 12 noon on June 26th, July 3rd, 17th, 24th, 31st, 2009 and August 7th, 14th, 21st and 28th, 2009 ***NOTE: On July 10th Appearance Day will be held at 9:30 am rather than 12 noon

Starting July 1st, please note that regular 9:30 am Supreme Court Chambers will only be held on Tuesday, Wednesday and Thursday. There will be NO chambers on Monday or Friday of each week.

The Court of Appeal chambers scheduled is unchanged during the summer.

COURT OF APPEAL

1. Counsel are reminded that Civil Procedure Rules 90.16(5) and 91.10, require the Appellant to delivery a copy of the Notice of Appeal filed with the Nova Scotia Court of Appeal to the lower court and the judge appealed from.
2. It has come to my attention that there is often a delay between the time the appellant's factum is filed with the court and when it is delivered to opposing counsel. This results in the respondent's court set time frame being shortened by counsel's late delivery. Civil Procedure Rule 90.32(1) and (2) and 91.18(1) requires simultaneous filing with the court and delivery to opposing counsel.

SUPREME COURT

1. If there is an "out of the ordinary" aspect to a filing, a cover letter MUST accompany the documents to alert staff to this. By way of example - if an affidavit is being sent for filing and is unsworn, a letter must explain that the sworn one will be filed within the prescribed time frames in the rules - absent a letter the document will not be accepted for filing. I must impress on counsel the need for these cover letters. The cover letters assist staff and reduce the number of documents being returned non-processed to

counsel.

2. When lawyers return corrected documents to the court for filing, we request that they include the pink sheet originally sent to them setting out the error requiring correction. This will assist in more rapid processing of the corrected documents.
3. Court staff have been directed to enforce the court filing dates for Chambers documents as set out in the Civil Procedure Rules. Where counsel are unable to file documents for Chambers at the prescribed dates, they must send a letter to the Prothonotary requesting an extension of the filing date. The Prothonotary will speak to the judge presiding and will advise counsel of the judge's determination on the question.
4. The November 26, 2007 issue of this communication was dedicated to robing. It has become apparent that it would be beneficial to remind counsel of the robing requirements, here follows the original article:

COURT OF APPEAL

1. Counsel are reminded that robing is required for all appeal hearings. Robing is not required for Court of Appeal Chambers.

SUPREME COURT

The judges of the Supreme Court approved a Robing Policy at their Annual Meeting in September, 2007. Therefore Practice Memorandum No. 3 is now repealed.

Robing in Halifax Law Courts

1. Robing is required for the following:

- (a) Special Time Chambers where the subject matter is an appeal (such as a Summary Conviction Appeal, Small Claims Court Appeal, FOIPOP and other statutory appeals);
- (b) civil trials; and
- (c) all criminal matters except Crownside (judges will robe for Crownside).

2. Robing is not required for the following:

- (a) General Chambers; and
- (b) Judicial Reviews.

Robing in the Districts

1. For civil matters, robing is required as in #1 (a) and (b) above and not required as in # 2 above;
2. For criminal matters, robing is required as in 1 (c) above (judges will robe for Criminal Chambers unless it involves only setting of dates or unless there is a different local practice about robing for joint Criminal and Civil Chambers).

PLEASE NOTE: For all court appearances where robing is not required, appropriate business attire is required.

The following policy below applies to the Family Division in **SYDNEY** and for Family matters in ALL the districts. **The following does NOT apply to the Family Division in Halifax - they will continue as at present.**

1. Gowning is required for the following, but subject to paragraph 2 (c):
 - (a) Divorce trials;
 - (b) Division of property trials pursuant to the *Matrimonial Property Act, Pension Benefits Act, Pension Benefits Division Act or Teachers Pension Act*;
 - (c) Trials for equitable relief of constructive trust, resulting trust or unjust enrichment claims or quantum meruit claims;
 - (d) Any protection hearing, disposition hearing or review hearing pursuant to the *Children and Family Services Act* which has been assigned a special time chambers date or a trial date;
 - (e) Applications pursuant to the *Testators Family Maintenance Act, Maintenance Enforcement Act, Order Enforcement Acts, Interjurisdictional Support Orders Act, Change of Name Act, Partition Act*;
 - (f) Trials regarding the interpretation or enforcement of a marriage contract, cohabitation agreement, separation agreement or a paternity agreement; and
 - (g) Trials on all other matters that are provided under an enactments to be within the jurisdiction of the Family Division.

2. Robing is not required for the following:

- (a) All interim applications including section 39 applications pursuant to the *Children and Family Services Act*;
- (b) All variation applications;
- (c) Any trial/application stated in paragraph 1 which has been scheduled during regular Chambers.

5. Commencing in September 2009, a pre-trial conference protocol for criminal Supreme Court matters will be in place at The Law Courts. The protocol is attached and counsel who practice in this area are asked to become familiar with the protocol and the pilot project.

A.M.B.

SUPREME COURT LIAISON SUB COMMITTEE (CRIMINAL) AD HOC COMMITTEE REPORT

BACKGROUND

In March 2007, the Supreme Court Liaison Sub Committee (Criminal), established an *ad hoc* committee to identify the most effective and efficient process for scheduling Supreme Court criminal trial dates.

Accordingly, Chief Justice Kennedy requested that Justice Cacchione and the Chair review the current practices of scheduling criminal trial dates within the province and report back to the Supreme Court Liaison Sub Committee (Criminal) a recommended scheduling process (a protocol) which could ensure shorter, efficient and more focused criminal trials without compromising trial fairness.

With this mandate, we commenced our review.

RELEVANT STATUTORY PROVISIONS

Procedure in jury trials is governed by Part XX of the *Criminal Code*. Section 625.1 of the *Criminal Code* provides for holding pre-trial conferences for cases to be tried in every level of trial court. In cases to be tried with a jury, s.625.1(2) makes pre-trial conference a mandatory part of the jury trial process.

The purpose of the pre-trial conference is to consider any matters that would promote a fair and expeditious trial.

Section 482 of the *Criminal Code* permits superior courts to make rules of court. Case management rules may be enacted by a superior court, pursuant to s.482(3), to regulate the pleadings, practice and procedures in criminal matters, including pre-trial conferences held under s. 625.1.

Pursuant to s.482.1 of the *Criminal Code*, a superior court may make rules for case management, including for the determination of any matter that would assist in conducting effective and efficient case management and establishing case management schedules. However, it does not appear that any such rules have been enacted in Nova Scotia. Consequently, the need for a protocol.

CONSULTATION WITH MEMBERS OF THE BAR

We commenced our review by consulting members of the Bar from across the province. In June, a letter was disseminated to the managing lawyers of both the Public Prosecution Service and Nova Scotia Legal Aid and the president of the Nova Scotia Criminal Lawyers Association . This letter sought their, and their colleagues, input as to whether or not a protocol that involves a pre-trial conference before setting down trial dates would be an improvement to the system which currently exists in their jurisdiction and serve to alleviate any problems which may exist in determining the appropriate time allocations for trials.

In October we reviewed all written submissions received from across the province and concluded that, apart from the Halifax Bar, it would appear that the general consensus is that there does not appear to be any reason to mandate having pre-trial conferences prior to setting down trial dates. However, notwithstanding that, many have expressed the view that full, complete and timely disclosure is absolutely necessary in order to enhance the efficiency and effectiveness of the criminal trial process.

DISCUSSION

The Necessity of Constructive Pre-Trial Conferences

The pre-trial conference must be constructive in the sense that it prove to be meaningful, important, and productive steps in the criminal trial process. At times those objectives are achieved under the current system. However, too often pre-trial conferences become meaningless and non-constructive with little more than a token appearance and re-affirmation of an estimated time required to complete the trial.

A properly conducted pre-trial conference is necessary in order to implement an effective protocol for scheduling trial dates.

There are two main obstacles to successful pre-trial conferences: unprepared or obstinate counsel who are unwilling to take binding positions or obtain instructions in order to clarify the issues; and a lack of full and timely disclosure.

(I) Unprepared Counsel

When either Crown or defence attend a pre-trial conference without being fully informed and willing to take positions regarding the issues to be addressed, the objectives of the conference are defeated before it commences. Therefore, it is critical that counsel of record for the accused and the prosecutor assigned to conduct the prosecution, or a prosecutor with authority to bind the prosecution, attend the pre-trial conference and participate in a meaningful and constructive way by being fully prepared to address the issues.

(ii) Disclosure

Obviously, full and timely disclosure is necessary in order to implement an effective protocol for scheduling trial dates. Hence, diligent efforts must be employed by the police, Crown and defence to ensure that disclosure issues do not delay the scheduling of pre-trial conferences.

RECOMMENDATION

After a review of the relevant *Criminal Code* provisions, the *Ontario Superior Court of Justice Criminal Proceeding Rules*, and careful consideration of written submissions of members of the Bar from across the province, we recommend that the following protocol be implemented in Halifax as a pilot project for a twelve (12) month period. Upon expiration of twelve (12) months, an evaluation of the project should be conducted.

Proposed Protocol:

- (1) A pre-trial conference shall be held within sixty (60) days of the order to stand trial on which it is based; or, where an indictment has been preferred under s. 577 of the *Criminal Code*, within sixty (60) days of the Attorney General's consent or judge's order, unless otherwise ordered by a judge of the court.
- (2) To facilitate the scheduling of the pre-trial conference and confirmation of trial dates, the first attendance in the Supreme Court should immediately follow the committal at which time a date for the pre-trial conference will be set.
- (3) Following pre-trial conferences, parties should return to the first available Crownside to set trial dates and any corollary dates.

SELF-REPRESENTATIVE LITIGANTS

This protocol does not apply to self-represented litigants.

ACKNOWLEDGMENTS

We wish to acknowledge and commend all lawyers who took time from their busy practices to respond to our request. Their input was invaluable, timely and necessary.

All of which is respectfully submitted,

Justice Felix Cacchione

Frank P. Hoskins, Q.C.
Chair