

IMPLEMENTATION OF ONTARIO COURT OF JUSTICE NOVEMBER 1, 2023 *JORDAN-COMPLIANT* DIRECTIVES – YORK REGION .

- **Effective January 2, 2024**

For matters sworn on or after November 1, 2023, if more than six months have elapsed since the information sworn date and the matter is not scheduled to resolve, the Crown and defence must be prepared to either resolve the matter or set a trial scheduling appearance date at the next court appearance.

For informations sworn on or after November 1, 2023 trial dates will be offered so that the case can complete within 15 months of the date the information was sworn.

Crown and Defence Counsel Obligations :

The expectations of counsel are set out in the November 1, 2023, Ontario Court of Justice *Jordan-Compliant* Trial Scheduling Directive. To implement these directives locally the following are time guidelines and expectations of counsel during the first 6 months of a proceeding for new charges laid on or after November 1, 2023:

- A CPT must be completed within 4 months for all matters.
- Disclosure must be requested and substantial disclosure must be provided.
 - If core disclosure remains outstanding when a matter reaches 4 months old the Crown must be ready to identify the nature of the outstanding disclosure, the reason for delay, and estimated time of completion.
 - If substantial disclosure has not been provided within 4 months a JPT should be scheduled.
- Prior to 6 months a JPT, if required, must have been held.
 - A JPT must be scheduled in any case not resolving that requires more than 1 day for trial, except for impaired driving/80 plus cases.
 - Impaired driving/80 plus cases with counsel do not require a JPT unless the matter is expected to take more than 2 days, or a pre-trial is requested by one of the parties.
 - For counsel matters requiring a JPT, they must be scheduled at or before the matter reaches 4 months through the trial coordinator's office. The JPT will be scheduled before the case reaches 6 months.

- The trial coordinator's office will be available to schedule pre-trials during virtual office hours as posted on the Trial Coordinator's automated email generic response. The generic email is: Newmarket.OCJ.Criminal.TrialCoordinator@ontario.ca
 - All self-represented matters, including impaired driving/80 plus matters, where a resolution has not been reached, must be pre-tried. The pre-trial must be scheduled once the matter reaches 4 months.
 - Cases approved for participation in the CTC court that are not expected to proceed to trial are not required to be pre-tried or set for trial in the 6-month timeline if the individual is completing counselling/programming and there are clear 11(b) waivers.
 - Intimate Partner Violence cases anticipated to resolve following completion of PARS/counselling are not required to be pre-tried or set for trial in the 6-month timeline provided there are clear 11(b) waivers.
- The Crown election is to be made as soon as possible and except in exceptional circumstances within three months after the charges are laid.
- Mode of trial elections are to be completed by written notice of election or by the accused appearing at the pre-trial court, or in JCMC court. If elections have not been made by the TS appearance, they must be made in the TS court, unless ordered otherwise by the presiding judicial officer.
- Where a replacement information is prepared elections must be made on the replacement information and any unnecessary informations are to be withdrawn at the first reasonable opportunity once the replacement information is before the court.
- If a JPT has been held and it is determined that a trial is required, counsel is to submit the TS form and the matter will be remanded directly to the TS court from the JPT court. A TS date can be obtained by the pretrial judge from the TC office.
- If following a JPT counsel is not ready to be remanded to TS court directly from the JPT court, the matter should be adjourned for 3 weeks to VCMC (201 docket) and, if a trial will be required, the TS form should be submitted within one week of the pre-trial. The TC office will send an invitation to counsel to attend the TS court.
- If a JPT is not required, the TS form is to be submitted within one week of the completion of the CPT if a trial will be requested. Counsel will receive an invitation to attend the TS court from the trial coordinator's office.

- Once an information reaches (or is about to reach) the 6-month point, if it has not yet been scheduled to resolve by GP or some other form of resolution (Diversion, Withdrawal, Peacebond, participation in CTC), the matter must be set for a TS appearance and set for trial. Counsel are to obtain a TS appearance date in advance of the 6-month date by submitting the trial scheduling form (TS form) to the TC office at least 2 weeks in advance of the 6-month appearance.
 - For 6-month matters not scheduled to resolve, if counsel has not obtained a TS date, ***the matter should be traversed from VCMC (201 dockets or DV106 dockets) to JCMC.***
 - If there is a trial estimate, cases will be remanded directly to TS court from JCMC and counsel will be required to submit the TS form if they have not already done so. The matter will be held down in JCMC court until counsel or the court confirms that the TS form has been submitted.
 - If no trial estimate has been completed, wherever possible a stand down JPT will be held in JCMC the same day and the case will be remitted to TS court from JCMC. If a stand down JPT cannot be completed the same day to determine a trial estimate, the case will be adjourned to TS court and to a date in JCMC in advance of the TS court for the trial estimate to be completed. If the case is complex, it should be scheduled for a JPT in advance of the TS appearance.
 - Where the case is remanded to both TS court and JCMC court because no trial estimate was completed, counsel must conduct a CPT in advance of the JCMC appearance and have a trial estimate ready for the JCMC appearance.
- After the trial date is set, if the parties become aware of issues that have arisen that may impact the length of time required for trial or preliminary hearing or whether the trial or preliminary hearing will proceed, in advance of the trial confirmation date counsel must:
 - Schedule a JPT and seek direction from the court;
 - Bring the matter forward to JCMC court for case management; or
 - File an application for an adjournment in JCMC court.

For transitional cases, matters sworn before November 1, 2023, that are more than six months old, if the matter is not scheduled to resolve, the Crown and defence must be prepared to either resolve the matter or set a trial scheduling date at the next court appearance.

JCMC Court, Trial Scheduling Court, and Trial Confirmation Court:

- JCMC will operate as a case management court 4 days a week, Tuesdays to Fridays. In-custody guilty pleas will no longer be heard in JCMC Court so that JCMC can accommodate 6-month matters that require a stand down pre-trial for trial estimates to be completed and/or need to be set from JCMC to a TS appearance.
- Trial confirmation court will be held in JCMC on alternate Mondays between 9:00 a.m. and 1:00 p.m. Trial confirmation court will be required on at least a bi-weekly basis due to an increase in the number of trial dates that will be set pursuant to the *Jordan-Compliant* Scheduling Directives.
- All matters will appear in trial confirmation court one month in advance of the scheduled trial dates. ***The trial confirmation date will be set at the TS appearance.***
- Matters appearing in trial confirmation court one month ahead of trial may be remanded to return to trial confirmation court where necessary two weeks before trial or in JCMC court if further case management is required.
- Community Treatment Court (CTC) will continue in JCMC court on Monday afternoons.
- Due to the anticipated increase in trial dates that will be set, additional TS courts will be required. A TS court will operate on Tuesdays and Wednesdays at 2:15 p.m. Two additional TS courts will be held on alternate Mondays in JCMC court (on the days when there is no trial confirmation court) from 9:00 a.m. to 1:00 p.m. ***Self-represented matters and in-custody matters to be set for trial will be adjourned to Monday TS courts.***
- When a 6-month case is set for trial, but requires additional case management, the presiding judicial officer in TS court may at the request of the parties, or in the discretion of the court, remand cases to JCMC after the TS appearance, or, where a case is complex, or requires intensive case management, may set an interim JPT.

Setting *Jordan-Compliant* Trial Dates:

- For information sworn on or after November 1, 2023 trial dates will be offered so that the case can complete within 15 months of the date the information was sworn.

- Either Crown or defence may request to waive or otherwise decline the trial date offered by the Court. Any such waiver must be clearly stated on the record. It will be up to the Court whether to grant the request.
- Beginning November 1, 2023, for transitional matters, sworn before November 1, 2023, *wherever possible*, the Court will offer trial dates so that the trial can be completed within 15 months of the sworn date on the information. If this is not possible due to the age of the matter, the Court will offer a trial date that is expected to result in the trial being completed as close as possible to 15 months of the information sworn date.
 - Either Crown or defence may request to waive or otherwise decline the trial date offered by the Court. Any such waiver must be clearly stated on the record. It will be up to the Court whether to grant the request.

In-Custody Guilty Pleas to be Moved to 202:

- In-custody guilty pleas and in-custody fitness related matters will be scheduled in 202 court so that JCMC is used strictly as a case management court.¹
- In accordance with the York Region November 28, 2022 - Notice to the Profession, unless ordered otherwise by the presiding judicial officer, in-custody guilty pleas are to take place **in person** and **counsel is to attend in person.**

Pre-trials:

- As the new *Jordan-Compliant* Trial Scheduling Directives are implemented, there will be an increased demand for counsel judicial pre-trials. Where there are sufficient judicial resources, a second “virtual” JPT court running on the same days and times as the existing JPT court will be scheduled.
- Two judges will be assigned to conduct pre-trials in the pre-trial court; one Judge will work from the primary virtual court with staff and the second will work from a virtual break-out room without staff. Only one Judge will preside “on the record”. Parties who have completed their JPTs in the second break-out room will address their matters after their pre-trial in the main courtroom before the Judge presiding in the primary virtual court.

¹ Other in-custody set date appearances are not to be set into 202 court because such appearances would slow down 202 court and interfere with the ability to use the court time for guilty pleas.

Self-Represented Matters

- For all self-represented matters sworn on or after November 1, 2023, if a resolution agreement has not been reached a self-represented judicial pre-trial should be set on or before the matter reaches 4 months.
- Trial estimates must be completed during every self-represented judicial pre-trial unless the matter resolves at the pre-trial or a resolution agreement is reached and scheduled.
- At the self-represented pre-trial, for matters to be set for trial, Crown counsel must advise whether a *Criminal Code* s. 486.3 application for appointment of counsel to conduct the cross-examination of a complainant or witness will be made. Such applications should be dealt with at the judicial pre-trial if on consent, or in JCMC court in advance of the TS appearance.
- Once the matter reaches (or is about to reach) 6-months the self-represented matter will be adjourned to a Monday TS court to set a date for trial. It can be adjourned to a Monday TS court directly from the JPT court or from JCMC.
- At the request of the Crown, self-represented litigant, or the court, when the self-represented matter is set for trial, it may also be adjourned to a JCMC case management date after the TS appearance. More complex self-represented matters may be set for a further self-represented judicial pre-trial with the original JPT Judge. Thereafter, the case may be adjourned for further case management as directed by the court in advance of the trial date.
- Self-represented matters will be scheduled for a Monday trial confirmation court one month in advance of the trial date.

Section 11(b) Applications:

- The November 28, 2022 local Notice regarding 11(b) applications is rescinded. Parties are to comply with the November 1, 2023 Ontario Court of Justice Practice Direction: Section 11(b) Charter Applications.
- Local implementation of the November 1, 2023 Section 11(b) Practice Direction will include that:
 - In accordance with the directive, s. 11(b) applications will be scheduled at the time of the TS appearance, at least 4 months in advance of trial.

- Counsel must have instructions regarding whether they intend to bring a s. 11(b) application at the pre-trial and at the time of the TS appearance if the trial may be set more than 18 months from the date of the swearing of the information.
- Where possible a s. 11(b) application will be heard by the trial judge. If the trial judge has not yet been assigned, s. 11(b) applications will be set in a trial court before a case management judge pursuant to s. 551.1 of the *Criminal Code*.

Justice Marcella Henschel
Ontario Court of Justice
Newmarket Ontario
December 18, 2023