



# **COVID-19: NOTICE TO COUNSEL AND THE PUBLIC RE: CRIMINAL MATTERS IN THE ONTARIO COURT OF JUSTICE**

*\*This Notice supersedes previously announced COVID-19 criminal notices and directives.*

*Effective Date: 11 May 2020*

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## 1. INTRODUCTION

To help prevent the spread of COVID-19, the Province of Ontario has extended the Declaration of Emergency until May 19, 2020. In light of the uncertainty about the duration of the state of emergency in Ontario, the Ontario Court of Justice will continue to operate on a reduced schedule.

No trials or preliminary inquiries will be conducted until July 6, 2020 at the earliest, unless a judge seized with a continuing matter orders otherwise and the Regional Senior Judge is satisfied that the necessary courthouse resources are in place. All criminal court appearances in the Ontario Court of Justice between Monday March 16 and Friday May 29 involving accused persons who are not in custody will be adjourned, in the absence of the accused person, as discussed in detail [below](#). An update regarding out-of-custody appearances that were scheduled to occur between June 1, 2020 and July 3, 2020 will be posted soon.

The Court is working closely with its justice partners, including the Ministry of the Attorney General, to expand the range of matters it adjudicates. As of Monday May 11, the Court will expand its operations to accommodate resolutions of criminal charges involving persons who are out of custody, where the Regional Senior Judge is satisfied that the necessary courthouse resources are in place. The Court's existing inventory of cases will be actively case managed through the use of judicial pre-trials.

The Court is working to adopt technology that will increase participants' ability to access courthouse services using remote means, including the electronic filing of court material, and remote hearings. The Court is also working with justice partners to plan for the eventual resumption of in-person attendances in a way that protects the health and safety of all participants.

Given the continued recommendations by public health authorities for everyone to stay home as much as possible and to maintain a safe distance from others, people are strongly discouraged from attending any courthouse. **All proceedings will be held by audioconference or videoconference unless otherwise directed.**

**Do not come into a courthouse if you have been advised by public health officials, your doctor, or the [Ontario Ministry of Health](#) website to self-isolate.**

Please continue to check the [Ontario Court of Justice website](#) for updates to this Notice.

## 2. APPLICATION

This Notice applies to all criminal matters, including matters under the *Youth Criminal Justice Act*, before the Ontario Court of Justice.

For purposes of this Notice, the term “defence counsel” includes duty counsel and agents authorized under s. 800(2) of the *Criminal Code*.

### **3. LEGAL ASSISTANCE FROM LEGAL AID ONTARIO**

If you need legal help and do not have a lawyer, contact Legal Aid Ontario at 1-800-668-8258 or through Bell Relay service at 1-800-855-0511, Monday to Friday from 8 a.m. to 5 p.m. (EST). You may qualify for help in court the same day, legal advice, or a lawyer for your whole matter. If you have recently been arrested, legal aid duty counsel may also be available to provide help to you when you are at the police station.

### **4. SCHEDULING DIRECTIVES**

#### **4.1 Suspension of All Trials and Preliminary Inquiries**

All criminal trials and preliminary inquiries that were scheduled to be held between Friday March 20, 2020 and Friday July 3, 2020, including trials and preliminary inquiries involving people who are in custody, are suspended, unless a judge seized with a continuing matter orders otherwise and the Regional Senior Judge is satisfied that the necessary courthouse resources are in place.

Trials and preliminary inquiries for accused persons who are in custody will be adjourned to a date as directed by the presiding judicial officer during a scheduled court appearance.

All trials and preliminary inquiries for accused persons who are not in custody will be adjourned in the absence of the accused in accordance with [section 4.3\(a\)](#) of this Notice.

The Court is not currently setting criminal trial or preliminary inquiry dates because of continued uncertainty as to when full operations will resume and the need to prioritize within the Court’s caseload.

The Court will continue to monitor public health advisories and will issue further directives regarding the scheduling of trials and preliminary inquiries, including providing information about the process for setting trial and preliminary inquiry dates.

For now, parties should assume that criminal trials and preliminary inquiries currently scheduled to take place on or after July 6, 2020 will proceed as scheduled. There is no need to attend for a second event or a trial confirmation date scheduled between now and July 3, 2020.

Please continue to monitor this website for updated scheduling directives.

## **4.2 Matters Involving People in Custody**

### **a. Scheduled Appearances**

People who are in custody on a criminal charge(s) will continue to appear for all scheduled court appearances, including bail proceedings, case management (remand) appearances, and plea proceedings.

This includes all appearances and proceedings under the *Youth Criminal Justice Act* involving young persons who are in custody, including detention reviews under s. 30.1, bail *de novo* hearings under s. 33, and sentence reviews under ss. 94 – 96 of the *YCJA*.

For details regarding [bail proceedings](#), consult the [COVID-19: Ontario Court of Justice Bail Hearing Protocol](#). For details regarding guilty plea proceedings involving people who are in custody, see [Section 7](#) of this Notice.

### **b. Process for Obtaining a Judge’s Order to Bring a Person in Custody Before the Court**

Where an in-custody accused person’s matter is being brought forward to be addressed in court for purposes of a guilty plea, bail hearing, or other type of appearance, counsel should notify the Trial Coordinator to request to have the matter brought forward to a new date. The email subject line should indicate “Judge’s Order Request” and include the accused person’s name and date of the court appearance. The body of the email should include the accused person’s name and date of birth (where known), the correctional facility where they are detained, the date and time and courtroom where they are requested to appear and the nature of the appearance (audioconference or videoconference).

The request will be reviewed by a judge. If the judge approves the request, an email confirming that a judge has ordered the accused person’s appearance will be sent to the correctional facility, the court clerk, defence counsel and the Crown at least 24 hours in advance of the new date.

Where this procedure is followed, a formal application for a judge’s order under s. 527 of the *Criminal Code* is not required.

## **4.3 Matters Involving People not in Custody**

### **a. Automatic Adjournment of Criminal Court Appearances Involving Accused Persons not in Custody**

**If you are not in custody and have a criminal court appearance in the Ontario Court of Justice between Monday March 16, 2020 and Friday May 29, 2020 do not attend**

**court.** The court will adjourn your matter without you being present, using a court order called a “[bench warrant with discretion](#)”, which will require you to attend court on the new date.

All criminal court appearances between Monday March 16 and Friday May 29 involving accused persons who are not in custody will be adjourned, in the absence of the accused person, to a date approximately 10 weeks from the original date. To find out what date your matter is being adjourned to, see the [list of adjournment dates](#). **These dates are subject to change.** Please check back on this website before your next court date to confirm the date.

The Court will publish an update shortly regarding court appearances that are currently scheduled to occur on or after June 1, 2020.

#### **b. Resolutions (including guilty pleas)**

Guilty plea proceedings involving persons who are not in custody can be scheduled in urgent situations, for example, where there is a deadline for eligibility for a particular program (e.g., Stream A in impaired driving) or where an accused is on particularly onerous bail conditions.

In addition, where the Regional Senior Judge is satisfied that the necessary courthouse resources are in place, appearances may be scheduled for accused persons who are not in custody to resolve their matter, including by withdrawal, stay, peace bond or guilty plea.

#### **c. Requests to Bring Urgent Out-of-Custody Matters Before the Court**

An accused person who is not in custody may request to have their matter brought forward to be addressed before the Court if it is urgent. Urgent matters are matters that require the Court’s attention before the next court date. Examples include: urgent guilty pleas (see [above](#)), urgent applications to vary police undertakings, and urgent applications to vary probation or conditional sentence conditions.

If you have an urgent criminal matter, please speak with your lawyer. If you do not have a lawyer, please contact Legal Aid Ontario at 1-800-668-8258 for assistance in submitting a request to have your matter brought before the Court. Requests to bring a matter forward are subject to judicial approval. The Court expects that the parties (defence and Crown/prosecutor) will have discussed the matter before a request is submitted.

#### **4.4 Other Matters**

A judicial official will continue to be available to preside over the following additional essential and urgent criminal and regulatory matters:

- matters related to public health and safety and the COVID-19 pandemic, including matters under the *Quarantine Act* and the *Health Protection and Protection Act*;
- swearing of Informations and confirmation of process by police officers;
- surety revocations,
- search warrants and any other urgent investigative warrants (tracking warrants, transmission data recorder warrants, production orders),
- Form 2 *Mental Health Act* applications,
- *Child Youth and Family Services Act (CYFSA)* apprehension warrants,
- any necessary and urgent *Provincial Offences Act (POA)* intake matters in courthouses that also deal with *POA* matters.

Before attending at the courthouse in relation to one of these matters, please contact the courthouse by [email](#) or [telephone](#) to find out whether the matter can be dealt with by audioconference or videoconference.

#### **4.5 Remote proceedings**

All proceedings will be conducted by audioconference and/or videoconference, unless otherwise specified in this Notice or as otherwise directed by a judicial official.

Attendance in courtrooms for criminal matters will be restricted to the judicial official and essential court staff, unless a judicial official directs otherwise.

### **5. SERVING AND FILING COURT DOCUMENTS**

#### **5.1 Serving by Email**

Court documents can be served by email pursuant to rule 3.3(1) of the [Criminal Rules of the Ontario Court of Justice](#).

#### **5.2 Filing by Email**

In response to the COVID-19 pandemic, and to avoid the need for personal attendance at courthouses, the following procedure for electronic filing has been established under Rules 5 and 3(2) of the [Criminal Rules of the Ontario Court of Justice](#).

Documents in criminal proceedings may be filed electronically ([by email](#)), in accordance with the [Notice to the Legal Profession and the Public regarding the process of emailing](#)

[urgent documents at the Ontario Court of Justice](#), or otherwise in accordance with the direction of a judge or justice of the peace.

When a document has been filed electronically, it is not necessary to file a paper copy.

When a document has been served by email and is being filed by email, a formal affidavit of service is not required to be filed. However, the person filing the document should retain a copy of any relevant affidavit(s) of service and/or related documents (e.g., email confirmations) and should be prepared to produce it to the Court on request.

Counsel are required to file documents electronically rather than in paper unless a judge or justice of the peace orders otherwise.

Self-represented accused persons are strongly encouraged to file documents electronically whenever possible. Access to courthouses is strictly limited due to the COVID-19 pandemic. If you are unable to file materials for a criminal matter by email, please contact your local courthouse by [email](#) or telephone, or by attending at your local courthouse. The addresses and phone numbers of all [Ontario Court of Justice courthouses](#) are posted on the Ministry of the Attorney General website.

### **5.3 Temporary Extension of Filing Deadlines for Pre-trial and Trial Applications**

Application materials in relation to a trial, preliminary inquiry or application that is scheduled to proceed on or after July 6, 2020 **should not be filed with the Court until further notice**. This directive will remain in effect until at least June 15, 2020. Counsel should consult the Court's website for updates as any filing deadline approaches.

Despite the extension of filing deadlines, materials related to **pre-trial applications and trial applications should continue to be served** on the opposing party in accordance with the timelines set out in the [Criminal Rules of the Ontario Court of Justice](#) for any trial, preliminary inquiry or application that is scheduled to proceed on or after July 6, 2020.

### **5.4 Electronic Signatures**

The Ontario Court of Justice will accept electronically signed documents where a signature is required. An electronic signature consists of electronic information that identifies the signatory and the date and place of signing.

### **5.5 Commissioning Affidavits**

Counsel are encouraged to refer to the guidelines of the Law Society of Ontario with respect to virtual commissioning during the COVID-19 pandemic: [Frequently Asked Practice Management Questions about COVID-19](#).

Where it is not possible for counsel to commission an affidavit in person or by virtual means, unsworn / unaffirmed affidavits may be filed with the Court, but the affiant is expected to be available to attend the hearing by audioconference or videoconference to swear or affirm the contents of the affidavit.

## **6. JUDICIAL PRE-TRIALS**

### **6.1 Availability of Judicial Pre-trials**

To ensure the fair and timely resolution of criminal charges, to reduce trial continuations and collapse rates, and to address the backlog of cases caused by the COVID-19 pandemic, the Ontario Court of Justice will continue to offer judicial pre-trials (JPTs) to address resolution options (including withdrawals or guilty pleas), accurate time estimates, and procedural and evidentiary issues that promote the proper use of trial time.

### **6.2 Mandatory Judicial Pre-trials**

In addition to the existing range of cases that are subject to JPTs as specified in the Court's [Judicial Criminal Pre-Trial Best Practices](#), JPTs will be mandatory in the following types of cases.

Unless a Regional Senior Judge directs otherwise, a JPT **must** be held in respect of all criminal proceedings, including *YCJA* proceedings:

- (i) that were scheduled for a trial or preliminary inquiry between March 16, 2020 and July 3, 2020 that was, or will be, adjourned due to the COVID-19 pandemic; and
- (ii) that are scheduled for a trial or preliminary inquiry between July 6, 2020 and October 30, 2020.

JPTs are not required in respect of continuing trials or preliminary inquiries with which a judge is seized.

The JPT is to address resolution and case management. The issues that will be addressed include, but are not limited to, the following:

- (i) any issues in relation to judicial interim release (where relevant);
- (ii) potential resolution of the matter;
- (iii) whether all or part of the trial / preliminary inquiry can be completed through the use of remote technology;

- (iv) the evidentiary and procedural issues at the trial / preliminary inquiry, including what admissions can be made; and
- (v) how best to promote the proper use of hearing time, including exploring the use of written submissions and establishing accurate time estimates for the trial / preliminary inquiry.

Priority in scheduling JPTs will be based on the scheduled trial or preliminary inquiry date.

### **6.3 Judicial Pre-Trial Materials**

The parties are expected to exchange and provide to the Court, at least three business days prior to the scheduled JPT, any materials that may assist with resolution discussions and/or trial management issues. See [Section 5.2](#) regarding the electronic filing of documents with the Court.

### **6.4 Manner of Conducting Judicial Pre-Trials**

All JPTs will be held by videoconference or audioconference, unless otherwise directed by the presiding judge.

Unless otherwise directed by the presiding judge, where the accused is represented by counsel, JPTs will take place off the record by videoconference or audioconference.

Where the accused person is not represented by counsel, JPTs will take place on the record and by videoconference, unless otherwise directed by the presiding judge. The pretrial will be closed to the public and the record of the JPT will not be released to any person without judicial direction.

## **7. GUILTY PLEA PROCEEDINGS**

### **7.1 Guilty Plea Proceedings Currently being Scheduled**

The Court will continue to hear guilty pleas by accused persons who are in custody and urgent guilty pleas by persons who are out of custody, for example, where there is a deadline for eligibility for a particular program (e.g. Stream A in impaired driving), or where an accused is on particularly onerous bail conditions.

In addition, the Court will also hear non-urgent guilty pleas by accused persons who are not in custody, where the Regional Senior Judge is satisfied that the necessary courthouse resources are in place.

Priority will be given to guilty pleas involving accused persons who are in custody.

## **7.2 Pre-Court Preparations and Discussions**

The Crown and defence counsel should communicate before the guilty plea proceeding is scheduled to confirm details regarding the plea, including (i) the count(s) to which the accused will be entering a plea, (ii) the facts underlying the plea; and (iii) the position each of the parties will be taking with respect to sentence.

Advance discussions are particularly important because current technological constraints may make it difficult for defence counsel and the accused person to have a private conversation during a remote appearance, although this must be accommodated wherever possible should the need arise.

All efforts should be made to ensure that the hearing can be completed without the need for a further appearance whenever possible.

## **7.3 Written Materials**

Any documentation that either the Crown or defence counsel wish to refer to, or to rely on as an exhibit on the plea, must be exchanged through email and filed by email with the Court in advance of the hearing: see [Sections 5.1](#) and [5.2](#) of this Notice.

## **8. BAIL HEARINGS**

To ensure that bail proceedings are dealt with effectively, the Court has established a protocol governing the conduct of bail hearings. Please see: [COVID-19: Ontario Court of Justice Bail Hearing Protocol](#).

## **9. APPLICATIONS TO VARY RELEASE ORDERS AND POLICE UNDERTAKINGS**

The Ontario Court of Justice has established procedures to allow individuals to apply to vary their release conditions by electronic means rather than attending at the courthouse. The new procedures govern consent variations of release conditions for individuals who have been released either by the Court (s. 515 of the *Criminal Code*) or by the police (s. 498, 499 or 503 of the *Criminal Code*). Please see:

[COVID-19: Ontario Court of Justice Consent Variation Procedures for Release Orders and Police Undertakings](#)

[Application for Consent Variation of Bail form](#)

[Application for Consent Variation of Police Undertaking form](#)

## **10. MEDIA**

The Ontario Court of Justice recognizes the critical importance of the open courts principle, including during the COVID-19 pandemic.

Attendance in courtrooms will be restricted to the judicial official, essential court staff, and those attending for urgent and/or essential intake court functions, with physical distancing measures to be strictly enforced in the courtrooms and throughout the courthouse. Accredited media who wish to make a request to have access to a court proceeding, other than an in-camera proceeding, should contact the local courthouse for more information about obtaining remote access to a proceeding.

Accredited media may also attend at the courthouse to obtain access to court records and related material.

## **11. COURTHOUSE CONTACT INFORMATION**

The [addresses and phone numbers](#) of all Ontario Court of Justice courthouses are posted on the [Ministry of the Attorney General website](#). Each courthouse also has an [email account](#) where you can file documents electronically or submit requests.