

REGIONAL NOTICE TO THE PROFESSION
PROTOCOL FOR CRIMINAL MATTERS IN THE SUPERIOR COURT OF JUSTICE,
CENTRAL EAST REGION
(Effective June 26, 2020)

Introduction

This Protocol applies to criminal matters in the Superior Court of Justice in the Central East Region effective June 26, 2020, and until further notice.

The Protocol is subject to change from time to time as may be necessary.

Criminal Matters Adjourned

By Orders of Chief Justice Geoffrey Morawetz made on March 17, 2020, and May 5, 2020, all criminal proceedings in the Superior Court of Justice including pre-trial motions, trials and the delivery of judgment, and guilty plea and sentencing proceedings, that were scheduled to take place between March 17 and July 6, 2020, were adjourned to specified dates in the week of July 6, 2020.¹

By further Order of Chief Justice Morawetz made on June 25, 2020, those proceedings were further adjourned to specified dates in the week of September 14, 2020, *except where the Court orders or directs otherwise*. The Order of the Chief Justice can be found at:

<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notice-june-25-2020/>

This portion of this Regional Notice addresses those matters where the Court has *ordered or directed otherwise*.

¹ By separate Notice of Chief Justice Morawetz dated April 20, 2020, all jury proceedings were suspended until September, 2020, at the earliest. That Notice remains in effect.

The Superior Court in the Central East Region is returning to very limited operations in courthouses on July 6, 2020. During that week, all Superior Court matters that had dates in the period March 16 through July 3, 2020, will be spoken to by a judge in an open courtroom. The following procedure will apply:

1. Efforts will have been made to contact counsel of record and in some cases self-represented defendants to arrange a *new fixed date* for these matters, whether for trial, judicial pre-trial, or to be spoken to. That new fixed date will be recorded in a written Endorsement to the Indictment.
2. During the week of July 6, 2020, a judge of the Court will preside in an open courtroom in each of the Barrie, Newmarket, and Oshawa courthouses, for the purpose of reading the Endorsement into the record and so formally adjourning the case to the *new fixed date*. Barrie and Bracebridge matters will be addressed in Barrie; Newmarket matters will be addressed in Newmarket; Cobourg, Lindsay, and Peterborough matters will be addressed in Newmarket; and Oshawa matters will be addressed in Oshawa.

Bench warrants with discretion will be put in place.

3. Where it has not been possible to arrange a new fixed date with counsel of record or with a self-represented defendant, the matter will be taken to be adjourned to be spoken to on the applicable September 2020 date set out in the Order of Chief Justice Morawetz dated June 25, 2020.

That Order put bench warrants with discretion in place.

4. **No defence counsel of record or agent or representative, and no defendant whether represented by counsel or self-represented should attend at any Central East courthouse during the week of July 6, 2020.**

In addition, during the week of July 6, 2020, Superior Court matters that have dates in the period July 6 through September 11, 2020, will be spoken to by the presiding judge referred to above. The following procedure will apply:

1. Counsel of record and in some cases self-represented defendants will have been contacted on those matters that were determined to be able to proceed during the period July 6 through September 11, 2020. That

will be recorded in a written Endorsement to the Indictment that will be read into the record by the presiding judge.

Bench warrants with discretion will be put in place.

2. For all other matters, where it has been possible to contact counsel of record or a self-represented defendant to arrange a *new fixed date*, that date will be recorded in a written Endorsement to the indictment that will be read into the record by the presiding judge, and so formally adjourning the case to the *new fixed date*.

Bench warrants with discretion will be put in place.

3. Where it has not been possible to arrange a new fixed date with counsel of record or with a self-represented defendant, the matter will be taken to be adjourned to be spoken to on the applicable September 2020 date set out in the Order of Chief Justice Morawetz dated June 25, 2020.

That Order put bench warrants with discretion in place.

4. **No defence counsel of record or agent or representative, and no defendant whether represented by counsel or self-represented should attend at any Central East courthouse during the week of July 6, 2020.**

Judicial Pre-Trials

Until further notice, all judicial pre-trials (“JPTs”) will be held by remote means. ZOOM videoconference and/or teleconference (“conference call”) will be the preferred medium. Other conference call lines will be available, including for self-represented defendants, where it is not possible to use ZOOM.

It is expected that counsel will book a JPT in the Superior Court at the same time as the defendant is ordered by an Ontario Court judge to stand trial in the Superior Court.

JPTs can be booked by contacting the trial coordinators at the telephone numbers listed at the end of this Regional Notice:

- Where the charges are outstanding in Barrie, by contacting Ms. Tina Tse, Trial Coordinator;

- Where the charges are outstanding in Bracebridge, by contacting Ms. Tina Tse, Trial Coordinator;
- Where the charges are outstanding in Newmarket, by contacting Ms. Llyshelle Barrett, Assistant Trial Coordinator;
- Where the charges are outstanding in Oshawa, by contacting Ms. Jackie Traviss, Trial Coordinator;
- Where the charges are outstanding in a Tri-County site (Cobourg, Lindsay and Peterborough), by contacting Ms. Maureen O'Brien, Trial Coordinator.

Crown and defence counsel must *jointly* complete a Form 17 Pre-Trial Conference Report and file it along with a synopsis of the offence(s) and a copy of the Indictment, by email to the generic email address for the trial coordinator at the applicable Court location, no later than 5 days before the date scheduled for the JPT.

Where the defendant is self-represented, the Crown and the defendant shall exchange and file their respective Form 17 within the timeframe specified on the front of the Form.

Counsel and any self-represented defendant must be available at the time set for the JPT and must be in a stationary location with good video or cell phone/land line reception.

No-one other than counsel may be present on the JPT videoconference/teleconference line, without the express permission of the presiding judge. The defendant will not be present for the JPT, except where they are self-represented or have counsel retained only to assist at the JPT.

No recording may be made of the JPT, except by order of the presiding judge.

90 Day and Other Bail Reviews and Superior Court Bail Applications

These matters will continue to be heard by remote means.

Counsel who wish to schedule a 90 day or other bail review or a Superior Court bail application should serve counsel for the opposite party with the materials by email, and then consult opposite counsel as to whether there will be consent.

If there is consent:

1. No hearing need be held.
2. Counsel will jointly complete all necessary paperwork, including terms of release and surety declaration, to enable a registrar to prepare the release document.
3. Counsel will forward the completed paperwork to the generic email address for the trial coordinator in the location where the defendant is charged.
4. The registrar will prepare the release document (for example, recognizance).
5. The registrar will contact the trial coordinator and arrange to have the release document emailed to a judge of the Court for review and approval.
6. The judge will confirm their approval by return email message to the trial coordinator, who will forward the email to the registrar. This email should be retained by the registrar for the court file.
7. The registrar will contact defence counsel for assistance in obtaining such binding acknowledgement as is required from the surety/sureties.
8. The registrar, pursuant to s. 3(2) of the *Criminal Code*, will sign the release document. It is not necessary for the judge to sign it.
9. The registrar will forward the release document and any other documents required to effect the defendant's release, to the institution.

If there is no consent:

1. Counsel requesting the hearing should send a copy of the materials and an email requesting a hearing to the generic email address for the trial coordinator in the location where the defendant is charged. Requesting counsel should copy opposite counsel on the email.
2. Where defence counsel requests the hearing, defence counsel should include in the materials either an affidavit of any proposed surety or a surety declaration form, and confirmation that defence counsel witnessed the signature of the surety, either in person or by some other means such as

Zoom, Facetime, or Skype, and confirmed identity by viewing photo identification. If counsel seeks relief from compliance with this requirement or any other aspect of the Superior Court's Criminal Proceedings Rules, counsel should include that request in the materials sent to the trial coordinator.

3. If counsel anticipates that an interpreter will be needed for the hearing for the defendant, a surety or a witness, counsel must advise the trial coordinator at the time the hearing is requested.
4. The trial coordinator will identify a date and time for the hearing, after consulting both counsel.
5. The trial coordinator will forward the materials to the assigned judge and advise them of the date and time of the hearing.
6. In the event the assigned judge wishes counsel to provide additional materials, the judge will attempt to notify counsel through the trial coordinator, in advance of the hearing.
7. Hearings will take place by teleconference, unless videoconference can be made available. The teleconference line will be one that permits the proceedings to be recorded. It may not be possible to have a court reporter on the teleconference line.
8. The trial coordinator will request that Court Services Division assign a registrar to the teleconference.
9. The trial coordinator will request that Court Services Division obtain any interpreter required for the teleconference.
10. *Review hearings can take place in the absence of the defendant.* If counsel nonetheless wishes the defendant to be present on the teleconference, that counsel must immediately notify the trial coordinator in the location where the defendant is charged. The trial coordinator will make the request of the institution where the defendant is in custody. A Judge's Order is *not* required. *Counsel should request that the defendant be present on the teleconference only if it is truly necessary. There are significant limitations on the number of defendants who can be given access to teleconference lines from the jails, and it may not be possible for institutions to facilitate every request.*

11. The trial coordinator will advise counsel, the jail, and court staff of the teleconference information. The presiding judge will be the Moderator.
12. In advance of the teleconference, counsel who seeks the hearing should complete a terms of release form and circulate it to opposite counsel.
13. If it is not possible for the surety/sureties to be in the presence of defence counsel during the teleconference, defence counsel must provide the surety/sureties with the teleconference information and have the surety/sureties dial in to the teleconference line at the appointed time.
14. At the conclusion of the hearing, the presiding judge may give their decision orally or may reserve their decision and release it to the parties in writing at a later time. In either case, the presiding judge should handwrite a brief written endorsement and if possible, scan it to the trial coordinator to be attached to the Indictment.
15. If the defendant's release is ordered, the registrar will complete the release document (for example, recognizance), then send it to the judge by email for review. The judge will confirm their approval by return email message. This email should be retained by the registrar for the court file.
10. The registrar will contact defence counsel for assistance in obtaining such binding acknowledgement as is required from the surety/sureties.
16. The registrar, pursuant to s. 3(2) of the *Criminal Code*, will sign the release document. It is not necessary for the presiding judge to sign it.
17. The registrar will forward the release document and any other documents required to effect the defendant's release, to the institution.

Stand-Alone Motions and Applications; Guilty Pleas

Hearing dates for stand-alone motions and applications such as *Rowbotham* applications, *certiorari* applications, and motions to stay driving prohibition Orders pending appeal can be obtained by contacting the trial coordinator at the applicable Court location.

Hearing dates for guilty pleas to be taken in person or virtually may be obtained in the same way.

In respect of motions and applications, Crown and defence counsel are asked to consider whether the matter can be heard in writing, or in writing with oral submissions to be made by videoconference or teleconference, and to advise the trial coordinator of this.

Summary Conviction Appeals

Hearing dates for summary conviction appeals can be obtained by contacting the trial coordinator at the applicable Court location. The appeal must be perfected in order for a hearing date to be fixed.

Crown and defence counsel are asked to consider whether the summary conviction appeal can be heard in writing, or in writing with oral submissions to be made by videoconference or teleconference, and to advise the trial coordinator of this.

Continuation Dates for Sentencing Proceedings

Counsel seeking a continuation date for a sentencing proceeding should contact the trial coordinator at the applicable Court location, on notice to all other counsel. The trial coordinator will communicate the direction of the judge to all counsel.

Virtual Hearings

Counsel seeking a date for a motion or trial to be conducted virtually by videoconference or teleconference should contact the trial coordinator at the applicable Court location, on notice to all other counsel. The trial coordinator will seek the direction of the Regional Senior Judge.

Inquiries About Other Matters

Inquiries about any matters not otherwise addressed in this Regional Notice, or where judicial direction is sought should be made to the trial coordinator at the applicable Court location, on notice to all other counsel.

Generic Email Addresses

The list of generic email addresses and the telephone numbers for the trial coordinators in the Central East Region is as follows:

Barrie.SCJ.TC@ontario.ca

705-739-6121

Ms. Tina Tse (for Barrie and Bracebridge)

Newmarket.SCJ.TC@ontario.ca

905-853-4827 ext 6328

Ms. Llyshelle Barrett (for Newmarket)

Oshawa.SCJ.TC@ontario.ca

905-743-2638

Ms. Jackie Traviss (for Oshawa)

Peterborough.SCJ.TC@ontario.ca

705-876-3823

1-800-788-0977

Ms. Maureen O'Brien (for Peterborough, Lindsay and Cobourg)

Dated June 26, 2020

A handwritten signature in blue ink that reads "Michelle Fuerst". The signature is written in a cursive, flowing style.

Justice Michelle Fuerst
Regional Senior Judge,
Superior Court of Justice,
Central East Region