



## SUPREME COURT OF BRITISH COLUMBIA

**Effective Date:** 2019/05/21

**Number:** CPD - 4

**Title:**

### **Criminal Practice Direction**

#### **Interim Procedure for Detention Reviews Under s. 525 of the *Criminal Code***

**Summary:**

*This interim practice direction sets out a general procedure for detention reviews under s. 525 of the Criminal Code following the Supreme Court of Canada's decision in R. v. Myers, 2019 SCC 18. The new procedure was developed in a series of meetings with representatives of the Supreme Court and Provincial Court judiciary, Crown counsel, defence counsel, the Legal Services Society, BC Corrections, Court Services Branch (including court sheriffs), Ministry of Children & Family Development, and the Court's Scheduling and legal staff. Some details remain to be resolved, and it is expected that this interim practice direction will be updated and replaced as experience develops with s. 525 applications and hearings.*

*The new procedure is designed to bring the detained person before the Court at the earliest opportunity after they have been detained in custody pending trial for 90 days (if charged with an indictable offence) or 30 days (if charged with a summary conviction offence), while also ensuring that Crown and defence counsel are notified and have access to the necessary materials in sufficient time to be ready to proceed or, in the case of defence counsel, assist the detained person in determining whether or not to waive their right to a s. 525 hearing. Three main steps are involved.*

*In the first main step, Corrections staff will initiate the application process by submitting a written application to a central address at Supreme Court Scheduling.*

*In the second main step, a Scheduling Hearing will be held at a date and time set out in a notice issued by Supreme Court Scheduling, in the location indicated in that notice. The detained*

*person will appear by video-link. Most Scheduling Hearings will take place in Vancouver. Out-of-town Crown or defence counsel may appear by video-link (if easily available) or by telephone.*

*In the third main step, a Detention Review Hearing will take place at the time, date, and location fixed by the Court, unless the detained person waives their right to have one. Detention Review Hearings will usually be held in the Supreme Court location closest to where the trial will be held, or in the main Supreme Court location in that region, but may be held elsewhere to convenience the various parties involved, if the Court so directs.*

#### **Direction:**

#### **Application by Person Having Custody of the Accused**

1. The warden of the institution where an accused is in custody will cause the Application required under s. 525(1) of the *Criminal Code* to be prepared and delivered.
2. Each Application is to be delivered by electronic means as a separate document attachment to the Supreme Court Scheduling Detention Review Coordinator at [detention.review@bccourts.ca](mailto:detention.review@bccourts.ca).

#### **Notice of the Scheduling Hearing**

3. The Court will review the Application and give notice to the accused person of the date, time, and location of a Scheduling Hearing.
4. Scheduling Hearings will usually take place at the Vancouver Law Courts, with the accused person appearing by video-link from the institution where they are detained.
5. If a judge of the Supreme Court is assigned as the trial judge or case management judge for the charges on which the accused is detained, the Scheduling Hearing will be set before that judge unless the Court directs otherwise.
6. The Detention Review Coordinator will prepare and deliver a notice of the date, time and location of the Scheduling Hearing (a Notice of Scheduling Hearing) and a copy of the Application to the accused person, care of the institution where they are detained, and will send copies by electronic means to the following parties:
  - a. if the Public Prosecution Service of Canada has conduct, to the designated central email address provided for this purpose;
  - b. if the British Columbia Prosecution Service has conduct, to the designated central email address or to the designated email address for the relevant Regional Crown Office provided for this purpose;
  - c. defence counsel, if known; and

- d. to the Legal Services Society at the designated email address provided for this purpose.
7. If an accused person wishes to have a Scheduling Hearing earlier than the date set out in the Notice of Scheduling Hearing, they or defence counsel may contact the Detention Review Coordinator to arrange an earlier date.

### **Consent Regarding Ineligibility**

8. If Crown and defence counsel agree that the accused person does not meet the eligibility requirements for a detention review in relation to the charges listed in the Application, they may complete and sign a *Consent Regarding Ineligibility for Detention Review* in the form attached as **Appendix A**, and submit it to the Detention Review Coordinator by electronic means.
9. If a Consent is submitted, the Application will be considered concluded.

### **The Scheduling Hearing**

10. The purpose of the Scheduling Hearing is to determine whether the accused person wishes a Detention Review Hearing to be held, and if they do, to schedule, or arrange to schedule, a date for a Detention Review Hearing and to discuss steps necessary for that hearing to proceed.
11. Unless the Court directs otherwise, the accused person will appear at the Scheduling Hearing by video-link from the institution where they are detained.
12. The accused person is not required to appear at the Scheduling Hearing if a counsel designation form has been filed with the Court, and designated counsel appears in person, or by video-link or telephone, on the accused's behalf.
13. In conjunction with scheduling a date for a Detention Review Hearing, the Court will generally:
  - a. ask counsel for their time estimates for a Detention Review Hearing;
  - b. consider what court location is the most appropriate for the Detention Review Hearing, taking into account the convenience of those who will be involved in the hearing, the availability of court facilities and staff, and other relevant circumstances;
  - c. address the issue of materials (e.g., transcripts, reasons, exhibits, etc.) that will be required at the Detention Review Hearing;
  - d. specify by what means the accused person will appear at the Detention Review Hearing so that the necessary arrangements can be made; and
  - e. canvass whether an interpreter will be required.

14. If the Court directs that the matter be set for a subsequent Scheduling Hearing, and defence counsel will appear on the accused's behalf, then unless the Court directs otherwise, the accused person is not required to appear at the subsequent Scheduling Hearing.

### **The Detention Review Hearing**

15. The Detention Review Hearing will take place at the time and date and in the court location scheduled at the Scheduling Hearing, unless subsequently scheduled or changed in the usual manner.
16. If a judge of the Supreme Court is assigned as the trial judge or case management judge for the charges on which the accused is detained, the Detention Review Hearing will be before that judge unless the Court directs otherwise.
17. The accused person will generally appear by video-link from the institution where they are detained, unless any of the following applies, in which case the accused person will appear in person for the Detention Review Hearing:
  - a. the accused person is not represented by counsel in the hearing;
  - b. evidence will be led in the hearing; or
  - c. the accused person will need an interpreter or other assistance that cannot reasonably be provided in the institution.
18. Unless oral evidence will be led at the hearing, the accused person is not required to appear at the Detention Review Hearing if a counsel designation form has been filed with the Court, and designated counsel appears personally on the accused's behalf.
19. If the presiding judge at the Detention Review Hearing determines that directions under s. 525(9) are required to expedite the trial, then:
  - a. in cases where the trial will be in the Provincial Court, the presiding judge will refer the matter to the Office of the Chief Judge, to the attention of the Associate Chief Judge, with a request that steps be taken forthwith to expedite the trial.
  - b. in cases where the trial will be in the Supreme Court, the presiding judge will refer the matter to the Chief Justice, Associate Chief Justice or their designate, with a request that steps be taken forthwith to expedite the trial.

**Heather J. Holmes**  
**Associate Chief Justice**

**Appendix A – Consent regarding ineligibility for detention review**

Vancouver Registry

Registry No. \_\_\_\_\_W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Regina

v.

\_\_\_\_\_ (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

**CONSENT REGARDING INELIGIBILITY FOR DETENTION REVIEW**

An Application dated \_\_\_\_\_ (date) has been made in relation to the accused  
\_\_\_\_\_ (name of accused) for a detention review under  
s. 525 of the *Criminal Code*.

The Scheduling Hearing in relation to the Application is set for \_\_\_\_\_ (date).

It is agreed that the accused does not meet the eligibility requirements for a detention review under s.  
525 at this time in relation to the charges listed in the Application (*provide the reason(s) for ineligibility*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is further agreed that neither a Scheduling Hearing nor a Detention Review Hearing is required in  
relation to the Application.

\_\_\_\_\_  
Crown Counsel Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defence Counsel Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date