



SUPREME COURT OF BRITISH COLUMBIA

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Criminal Practice Direction

Complex Criminal Cases

This Criminal Practice Direction describes the process by which the Court will manage large or complex criminal cases that show a potential to occupy a very significant amount of court time or to risk delays in reaching and concluding the trial.

The process will begin with case management for each such case from a very early stage, to ensure that the case progresses as it should and that any voir dres and pre-trial applications, as well as the trial itself, begin promptly and conclude within a reasonable time. The Court may, where appropriate, conduct parallel or simultaneous proceedings in the same case before two different judges.

Each complex criminal case that is subject to this practice direction will have a case management judge who will conduct periodic case management conferences beginning when the case first arrives in the Court. The case management judge will also conduct an application screening conference at which he or she will determine which, if any, voir dres or pre-trial applications will be heard, the timelines for notice and other procedural steps, the general form of the evidence in the hearings of the voir dres and pre-trial applications, and the schedule for those hearings and for the trial.

The new approach will require the active and extensive involvement of Crown and defence counsel from shortly after the accused person's first appearance in the Court. It will usually require that the Crown disclose its case at or shortly after the first appearance and be ready to proceed to trial not long afterwards. Similarly, defence counsel will need to be retained, instructed, and dedicated to the preparation of the defence at that early stage.

The practice direction refers mainly to prosecutions of criminal charges. However, it should be read as applying also to any extradition proceedings that meet the indicated criteria.

TABLE OF CONTENTS

Application of the Practice Direction.....	3
Milestones As the Case Progresses Through the Court	3
Preferring the Indictment	4
Case Management Judge and Case Management Conferences	4
Disclosure.....	4
Crown Synopsis and Trial Plan	5
Application Screening Conference.....	5
<i>Voir Dires</i> and Other Pre-Trial Applications.....	6
Trial	6
Modification of Timelines	6
Case Management Judge	7
Appointment of the Case Management Judge.....	7
Role of the Case Management Judge	7
Case Management Conferences.....	9
Timing of Case Management Conferences.....	9
Conducted by the Case Management Judge	9
Materials for Case Management Conferences	9
Crown Synopsis.....	9
Crown’s Trial Plan	10
Changes to Case Management Materials.....	10
Matters for Consideration at Case Management Conferences.....	11
Application Screening Conference	12
Timing.....	12
Notice of <i>Voir Dires</i> or Pre-Trial Applications	12
Judge’s Role at the Application Screening Conference	13
After the Application Screening Conference.....	14
Further Case Management Conferences.....	14
Revisions to the Case Management Plan	14
Information and Material to be Conveyed to the Trial Judge	14
Involvement of the Case Management Judge during the Trial	14

APPLICATION OF THE PRACTICE DIRECTION

1. A criminal case will generally be treated as a complex criminal case that is subject to this practice direction (unless the case is removed from the scope of the practice direction, as described below) if
 - (a) the Chief Justice or the Associate Chief Justice or their designate estimates that 60 court days or more will be required for the trial, including all *voir dices* and other pre-trial applications,
 - (b) the Chief Justice or the Associate Chief Justice or their designate determines that the case is unusually complex, or
 - (c) the Crown has preferred a direct indictment under s. 577 of the *Criminal Code*, and the Chief Justice or the Associate Chief Justice or their designate determines that the case should be subject to the practice direction.
2. The Chief Justice or the Associate Chief Justice or their designate will usually make the estimate or determinations described in paragraph 1 (a), (b), and (c) at or around the time of the accused person's first appearance in the Court, generally after consultation with Crown and defence counsel or the accused person.
3. A case may at any time be removed from or brought within the ambit of the practice direction. One or more of the parties may apply on this point to the Chief Justice or the Associate Chief Justice, the case management judge, or the trial judge. Or, any of those judges may reconsider the point on his or her own initiative, generally after consultation with Crown and defence counsel or the accused person.

On any determination, application, or reconsideration of whether a case should be treated as subject to the practice direction, the guidelines in sub-paragraphs 1 (a) through (c) will usually frame the analysis. However, the parties may identify additional considerations, or may point out, for example, why a case that appears to fall within sub-paragraphs (a) through (c) will not require the intense case management for which the practice direction provides, or why an apparently short and straightforward case will require that case management.

MILESTONES AS THE CASE PROGRESSES THROUGH THE COURT

The following paragraphs set out the timelines that are expected to apply to cases subject to this practice direction.

The timelines are not aligned with the ceilings set out by the Supreme Court of Canada in R. v. Jordan, 2016 SCC 27, where the Court discussed an accused person's right under s. 11(b) of the Charter of Rights and Freedoms to a trial within a reasonable time. Recognizing the complexity of the cases to which this practice direction applies, the practice direction speaks more generally of the Court's expectations of how these cases will be managed as they progress toward trial. Determinations of alleged breaches of s. 11(b), should this issue arise in a complex criminal case, will continue to be made on a case-by-case basis, according to the principles in R. v. Jordan and any further developments in the law.

Paragraphs 20-23, below, allow for the framework of timelines to be modified for cases that are truly extraordinary, compared to other complex criminal cases that are subject to this practice direction.

Preferring the Indictment

4. For every case that may be subject to this practice direction (and, wherever possible, for every other criminal case), the Crown will be expected to prefer an indictment on or before the accused person's first appearance in this Court.

Case Management Judge and Case Management Conferences

5. The Chief Justice or the Associate Chief Justice or their designate will appoint a case management judge (under s. 551.1 of the *Criminal Code*) at or around the time that it appears or is determined that the case is subject to this practice direction.
6. The case management judge will conduct a case management conference shortly after the accused person's first appearance in the Court, and will hold further case management conferences from time to time afterwards as necessary.

Disclosure

The timelines for disclosure set out below (and some subsequent steps in the process) are shorter for cases where proceedings took place in the Provincial Court than for cases initiated by direct indictment. This is because proceedings in the Provincial Court, such as a preliminary inquiry, will often allow for near-complete disclosure before committal for trial and the first appearance in this Court. By contrast, for a case initiated by direct indictment after a recent police investigation that did not allow for ongoing disclosure, disclosure may require longer (after the accused person's first appearance) to complete.

The Court recognizes that some cases will not fall squarely within one of the two categories. For example, only very limited proceedings may take place in the Provincial Court before the Crown prefers a direct indictment. Or, a case initiated by direct indictment may be small in scope and entirely straightforward. In any such uncertain situations, one or both parties may ask the Chief Justice or the Associate Chief Justice or the case management judge to specify whether the shorter or the longer timelines will apply.

7. For cases where proceedings took place in the Provincial Court
 - (a) initial Crown disclosure (consisting of the substantial portion of the disclosure to be given to the accused person) will be made within 30 days of the accused person's first appearance in the Court, and
 - (b) all remaining Crown disclosure will be made within three months of the accused person's first appearance in the Court.
8. For cases initiated by direct indictment

- (a) initial Crown disclosure (consisting of the substantial portion of the disclosure to be given to the accused person) will be made within three months of the accused person's first appearance in the Court, and
 - (b) all remaining Crown disclosure will be made within five months of the accused person's first appearance in the Court.
- 9. One or both parties may ask the Chief Justice or the Associate Chief Justice or the case management judge to specify which timelines (paragraph 7 or paragraph 8) will apply for disclosure, and, correspondingly, which timelines will apply to the remaining steps in the pre-trial process. This determination will usually turn on the extent of the disclosure reasonably to be expected of the Crown by the time of the accused person's first appearance in the Court, or shortly after it. For that reason, the application should be made at that time, or, at the latest, at the first case management conference.
- 10. The expectation that all Crown disclosure be made within three months (paragraph 7) or five months (paragraph 8) of the accused person's first appearance in the Court does not in any way affect the Crown's ongoing disclosure obligation. Similarly, the timelines for disclosure do not affect the Crown's obligation to make disclosure as soon as practicable.
- 11. Where Crown disclosure is made outside the indicated timelines, any issues that arise should be raised with the case management judge (before the trial), or with the trial judge (if the trial has begun), at the earliest opportunity.

Crown Synopsis and Trial Plan

- 12. The Crown Synopsis, referred to in paragraphs 35-36, is to be delivered to the defence and the Court at least 7 days before the first case management conference or within 30 days of the first appearance in this Court, whichever is sooner.
- 13. In addition, the Crown will deliver a trial plan to the defence and the Court, containing the information described below in paragraph 37.
- 14. For cases where proceedings took place in the Provincial Court of B.C., the Crown's trial plan is to be delivered at least 7 days before the first case management conference.
- 15. For cases initiated by direct indictment, the date for delivery of the Crown's trial plan will be discussed and set at the first case management conference, unless the Crown has been able to deliver it before then.

Application Screening Conference

- 16. An Application Screening Conference, as described below in paragraphs 42-47, will be held within the following times
 - (a) for cases where proceedings took place in the Provincial Court of B.C., within six months of the accused person's first appearance in the Court, and
 - (b) for cases initiated by direct indictment, within nine months of the accused person's first appearance in the Court.

17. As mentioned above in paragraph 9, one or both parties may at an early stage ask the Chief Justice or the Associate Chief Justice or the case management judge to specify which timelines (in sub-paragraphs 16 (a) and (b) respectively) apply to disclosure and other steps, including the application screening conference. In addition, the defence may make such a request (or ask for a reconsideration) about the timelines for the application screening conference, shortly after receiving Crown disclosure.

Voir Dires and Other Pre-Trial Applications

18. All *voir dires* and pre-trial applications are expected to complete within the following times
- (a) for cases where proceedings took place in the Provincial Court of B.C., within twelve months of the accused person's first appearance in the Court, and
 - (b) for cases initiated by direct indictment, within fifteen months of the accused person's first appearance in the Court.

In some situations, it may be appropriate for voir dire or pre-trial applications to be heard concurrently by two judges, in order for these timelines to be met. This will be a matter for consideration at the Application Screening Conference. The parties should also take this into account at the earlier stage of assigning or retaining counsel for the case.

Trial

19. The trial is expected to conclude within the following times
- (a) for cases where proceedings took place in the Provincial Court of B.C., within twenty-four months of the accused person's first appearance in the Court, and
 - (b) for cases initiated by direct indictment, within twenty-eight months of the accused person's first appearance in the Court.

For the purposes of the timelines in this practice direction, the trial does not include sentencing proceedings.

Modification of Timelines

20. For a case subject to this practice direction, a party may apply for modification of the framework of timelines if the case is truly extraordinary, compared with other complex criminal cases that are subject to this practice direction.
21. The application may be made to the Chief Justice or the Associate Chief Justice when the accused person first appears in the Court or shortly after, or to the case management judge at any time.
22. A case will be truly extraordinary, compared with other complex criminal cases that are subject to this practice direction only if
- (a) urgent public safety concerns required the indictment to be preferred at a time which does not reasonably allow the Crown to conform to the timelines for disclosure in paragraphs 7 and 8, or

- (b) the case is of a magnitude or complexity far exceeding those of other complex criminal cases that are subject to this practice direction.

- 23. The timelines set out above are intended to frame and guide the overall progress of the case. They reflect the general nature of the cases subject to this practice direction and their anticipated scope and complexity. Modification of the framework of timelines, according to the preceding three paragraphs, will accordingly reflect those general characteristics of a case, and not specific circumstances that may have arisen during the course of the proceedings.

An application for modification of the framework of timelines on the basis that a case is truly extraordinary should be based on the general nature of the case and its anticipated scope and complexity. For that reason, such applications will generally be made at an early stage.

Applications for extensions of specific timelines because of specific circumstances (e.g. for an extension of the period for notice of an application because of the illness of counsel) fall outside the scope of the preceding paragraphs, and should be addressed separately with the case management judge.

CASE MANAGEMENT JUDGE

Appointment of the Case Management Judge

- 24. The Chief Justice or the Associate Chief Justice or their designate will appoint a case management judge for a case under s. 551.1 of the *Criminal Code* at or around the time that the case appears or is determined to be subject to this practice direction.
- 25. The case management judge will usually be appointed at the time of the accused person's first appearance in the Court, or shortly afterwards.
- 26. The Chief Justice or the Associate Chief Justice or their designate may appoint an additional case management judge for the case in the appropriate circumstances. One or more of the parties may apply on this point to the Chief Justice or the Associate Chief Justice, the case management judge, or the trial judge. Or, the Chief Justice or the Associate Chief Justice may make such an appointment of their own initiative, or on the recommendation of the case management judge. In those circumstances, Crown and defence counsel or the accused person will usually be consulted.

In some situations -- especially where the Crown and the defence are represented by multiple counsel -- it may be appropriate and useful for the progress of the case for one case management judge to hear one or more voir dres or pre-trial applications while another case management judge or the trial judge hears others. Account must be taken of the principle that the accused person is entitled to be present throughout his or her trial.

Role of the Case Management Judge

- 27. The case management judge will perform the role described in s. 551.2 of the *Criminal Code*, namely to assist in promoting a fair and efficient trial, including by ensuring that the

evidence on the merits is presented, to the extent possible, without interruption. The case management judge may or may not be the trial judge.

28. In managing the case, the case management judge will exercise the powers expressly set out in s. 551.3 of the *Criminal Code* or recognized by the common law, and will generally:
- (a) conduct periodic case management conferences, as described below in paragraphs 30-41, beginning shortly after the accused person's first appearance in the Court
 - (b) for cases initiated by direct indictment, establish, at the first case management conference, a date by which the Crown's trial plan is to be delivered to the defence and the Court
 - (c) hear, or arrange for the hearing of, any pre-trial applications that need to be determined at an early stage, before the application screening conference

Some applications may need to be heard and determined at an early stage, before the application screening conference can take place - for example, some applications relating to the retaining of counsel for the accused person, or for additional disclosure, or for severance. Subsections 551.3(1)(g) and (4) of the Criminal Code give the case management judge authority to adjudicate in many of these situations.

- (d) schedule and conduct, or ask the Chief Justice or the Associate Chief Justice to appoint another judge to conduct, the application screening conference, and, accordingly, perform the various functions described in paragraph 47, below, either in the application screening conference or at some other appropriate time

Any setting of dates should take into account not only the calendars and the other obligations of the judge who will preside, and of counsel or the accused person and the witnesses, but also the availability of court staff and the appropriate types of courtrooms.

- (e) from time to time, adjust the timelines or directions that apply to the case to accord with the specific circumstances of the case
- (f) until a trial judge is assigned, consider any changes the Crown makes to its trial plan, and their consequences for the progress and schedule of the trial, and make adjustments to timelines or directions as appropriate, and
- (g) where requested to do so by the Chief Justice or the Associate Chief Justice or by the trial judge in consultation with the Chief Justice or the Associate Chief Justice, hear and determine *voir dire*s or pre-trial or other applications before or during the trial. (See s. 551.3(1)(g) and (4) of the *Criminal Code*.)

29. The case management judge will deal with instances of non-compliance with timelines or other components of this practice direction by exercising his or her case management powers as the circumstances of the case require.

Responses to non-compliance may include formally attributing responsibility for the resulting delay (for the purposes of any later analysis of whether there was a breach of the accused's right under s. 11(b) of the Charter of Rights and Freedoms). In more egregious cases of non-compliance, the case

management judge or the trial judge may take such other steps as may be necessary to ensure that the case proceeds in an orderly way and within a reasonable time.

CASE MANAGEMENT CONFERENCES

Case management conferences are intended to identify issues that require resolution before or during the trial, and to ensure that all issues are addressed and resolved – whether in a hearing or in some other manner -- in an efficient and effective fashion that allows for the orderly progress of the trial within a reasonable time.

Counsel should consider and discuss with the case management judge whether the accused person will attend some or all of the case management conferences, taking into account whether the accused person has formally designated counsel to appear in his or her place, and whether the accused person's vital interests may be at stake in the case management conference.

Timing of Case Management Conferences

30. A case management conference will be held shortly after the accused person's first appearance in the Court.
31. Further case management conferences will be scheduled by the Court from time to time, and may be requested by one or both parties at any time.
32. Some case management conferences (as well as the application screening conference described below in paragraphs 42-47) will be longer than can be accommodated before or after normal court hours. As a result, counsel handling cases that are subject to this practice direction should have time available in their calendars for periodic conferences during regular court hours.

Conducted by the Case Management Judge

33. The case management judge will generally conduct the case management conferences.
34. If a case management judge has not been appointed, or if the appointed case management judge is not available, the case management conference will be conducted by the Chief Justice or the Associate Chief Justice or their designate.

Materials for Case Management Conferences

Crown Synopsis

35. The Crown will deliver a Crown synopsis in accordance with [Criminal Practice Direction 1 - Criminal Pre-Trial Conference Process, paras. 2-4](#)).
36. As indicated above (in paragraph 12), the Crown Synopsis is to be delivered to the defence and the Court at least 7 days before the first case management conference or within 30 days of the first appearance in this Court, whichever is sooner. The Court may adjust the time for delivery as necessary in the circumstances.

Crown's Trial Plan

37. Also to be delivered, at the times indicated in paragraphs 14 and 15, is the Crown's trial plan, setting out
- (a) a succinct description of the evidence addressing the elements of the alleged offence(s), and, if appropriate, the elements of the defence(s) likely to be at play
e.g. re the identity of the offender - evidence of the accused person's DNA on the gun found in a dumpster behind the store where the victim (a store clerk) was shot
 - (b) the witnesses the Crown expects to call, and an overview of the evidence each witness is expected to provide
e.g. Det. Joe Smith - seized a gun from the dumpster behind the store 30 minutes after the shooting; swabbed the gun for DNA testing
 - (c) for each proposed expert witness, a brief description of the proposed areas of expertise, and an overview of the witness's expected evidence
e.g. Maria Carerras - DNA analyst - the sample taken (by Det. Joe Smith) from the seized gun matches the accused person's "known" sample
 - (d) details of the *voir dire*s or other pre-trial applications to be sought or made by the Crown
 - (e) a general description of the potential *voir dire* or other pre-trial applications that the Court may wish to canvass with the defence
 - (f) any known or anticipated objections to the admission of Crown exhibits or other evidence in the trial
 - (g) an overview of the admissions the Crown will seek, and
 - (h) practical or logistical issues relating to anticipated *voir dire*s or pre-trial applications or the trial, such as specific courtroom or equipment needs, security issues, and special accommodation for witnesses or others.

Changes to Case Management Materials

38. The Crown Synopsis and the Crown's trial plan may be revised from time to time.
39. The case management judge may require additional materials to assist with the management of the case.
40. The Crown Synopsis, the Crown's trial plan, and any other documents required by the case management judge for case management purposes are to assist the defence in its review of the Crown disclosure and its preparation of the defence, and the Court in the management of the case. They are not to be treated as formal particulars of the indictment, binding on the Crown.

Matters for Consideration at Case Management Conferences

41. In performing the role described at paragraphs 27-29 above, the case management judge will generally, as appropriate for the case
- (a) where the accused person has not retained counsel
 - (i) advise on steps the accused person may take to do so, and
 - (ii) if the accused person will represent himself or herself during the proceedings, direct him or her to resources for information about how to do so
 - (b) review the Crown's trial plan with the parties, and discuss with the parties such matters as
 - (i) whether all of the proposed evidence is necessary, given the parties' positions
 - (ii) topics appropriate for potential admissions
 - (iii) the point in the trial at which certain evidence will be dealt with, and
 - (iv) any known scheduling constraints on the parties, the witnesses, or the Court
 - (c) discuss potential admissions, and set timelines by which, for example
 - (i) the party seeking admissions will outline them in writing in general terms
 - (ii) the other party will then indicate whether those admissions will be made, subject to an acceptable detailed draft
 - (iii) the seeking party will propose a detailed draft reflecting the areas of general agreement, and
 - (iv) the other party will indicate whether the admissions, as drafted, are acceptable or not
 - (d) identify any applications that may need to be determined before the application screening conference, specify timelines for notice and other procedural steps, and arrange for the applications to be heard
 - (e) identify other *voir dire*s or pre-trial applications the parties will seek or bring, and discuss the timelines and other procedural steps leading toward the application screening conference
 - (f) identify issues in the proceeding that arise also in another proceeding, and discuss whether the Chief Justice or the Associate Chief Justice should be asked to consider appointing a single judge to hold a joint hearing for the purposes of both proceedings (under s. 551.7 of the *Criminal Code*)
 - (g) identify any issues or matters that could usefully be referred to a different case management judge

- (h) in anticipation of the application screening conference, discuss whether *voir dices* or pre-trial applications could appropriately take place concurrently before two judges, in order to help the progress and efficiency of the proceedings
- (i) identify any issues or matters that may require a specialized procedure at any stage, such as restrictions on access to the courtroom or on publication of the proceedings
- (j) discuss whether a change in the accused person's election as to mode of trial, if he or she favours such a change, would assist the progress of the case, and
- (k) schedule the trial to complete within a reasonable time, and help ensure that the parties are ready to proceed as scheduled.

APPLICATION SCREENING CONFERENCE

The main purpose of the application screening conference is to identify the voir dices and pre-trial applications that will be heard, and to specify how, and according to what schedule, they will be heard and determined well in advance of the trial.

The accused person will generally be present for the application screening conference.

Timing

- 42. An application screening conference will be held within the time periods described in paragraph 16 above, namely
 - (a) for cases where proceedings took place in the Provincial Court of B.C., within six months of the accused person's first appearance in the Court, and
 - (b) for cases initiated by direct indictment, within nine months of the accused person's first appearance in the Court.
- 43. Generally, the case management judge will conduct the application screening conference.
- 44. For cases with no *voir dices* or pre-trial applications, or where they are few and their organization and scheduling has been settled in case management conferences, the case management judge may decide that an application screening conference is not necessary.
- 45. Application screening conferences will usually be longer than can be scheduled for the periods before or after normal court hours. Counsel should therefore have time available in their calendars for the application screening conference to be heard during normal court hours.

Notice of *Voir Dices* or Pre-Trial Applications

- 46. At least 14 days before the application screening conference, the parties are to deliver to the other party and the Court written notice of each *voir dire* or pre-trial application they wish the Court to hear in the case. The written notice is to set out in detail
 - (a) the relief sought
 - (b) the basis in law on which it is sought

- (c) the facts on which the applicant relies
- (d) an overview of the evidence proposed to be adduced in support of the application, including the form of the evidence (for example, *viva voce* evidence, affidavits, agreed statements of fact, statements of counsel), and
- (e) the time estimate for the *voir dire* or pre-trial application, and an explanation for the basis of the estimate (by reference to, for example, the direct examination and the cross-examination of each witness, submissions, etc.).

Some applications (such as those engaging the Constitutional Question Act, or those involving third-party records-holders) require notice to additional parties. Any such additional parties are also to receive the material described in paragraph 46 at least 14 days before the application screening conference at which the application will be considered under paragraph 47.

Judge's Role at the Application Screening Conference

47. The judge at the application screening conference, will generally
- (a) determine which *voir dire*s and pre-trial applications will be heard
 - (b) specify their format and procedure, including
 - (i) the form of the evidence to be adduced (such as *viva voce* evidence, affidavits, written summaries, statements of counsel)
 - (ii) any restrictions on the scope or the length of the evidence to be adduced
 - (iii) any restrictions on the scope and length of the parties' submissions
 - (iv) whether written submissions are to be provided in advance, and
 - (v) the format in which case authorities are to be provided to the Court, and any restrictions on their number
 - (c) create a schedule for the hearing of the *voir dire*s and pre-trial applications, after consultation, including with the trial judge (if he or she will be presiding), or with any judge who will be presiding over the *voir dire*s or pre-trial applications
 - (d) establish timelines for preparatory steps before the hearing of each of those *voir dire*s and pre-trial applications, including
 - (i) any further notice that is to be given
 - (ii) any disclosure or delivery of further materials to be made by either party
 - (iii) exchanges of witness lists
 - (iv) delivery of written outlines or argument or more detailed submissions, as the case may be, and
 - (v) delivery of case authorities
 - (e) in performing the role described above, take into account whether specific *voir dire* or pre-trial issues or applications should be referred to a different judge, and

whether some *voir dire*s or pre-trial applications can appropriately be heard concurrently by two judges, and

- (f) oversee the development of a case management plan, for the proceedings before trial, reflecting the various determinations and directions described above.

AFTER THE APPLICATION SCREENING CONFERENCE

Further Case Management Conferences

- 48. The case management judge will continue to hold case management conferences from time to time, to ensure that the case is progressing in accordance with the case management plan, and to review the development of the Crown's trial plan.
- 49. One or both parties may request a case management conference at any time.

Revisions to the Case Management Plan

- 50. The case management judge may authorize and oversee such revisions of the case management plan as seem appropriate from time to time.

Information and Material to be Conveyed to the Trial Judge

- 51. The case management judge will ensure that the case management plan and the information specified in s. 551.4(1)(a) through (d) of the *Criminal Code* are conveyed to the trial judge.
- 52. The case management judge will also ensure that the trial judge (if the trial judge is not the case management judge) is given the Crown's trial plan, as updated, together with any pertinent information or directions made about that trial plan.

Involvement of the Case Management Judge during the Trial

- 53. As noted above, the trial judge may, after consultation with the Chief Justice or the Associate Chief Justice, ask the case management judge to hear a particular *voir dire* or application or deal with a particular matter during the trial.

Heather J. Holmes
Associate Chief Justice