



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2022/02/09

Number: CPD - 4

Title:

Criminal Practice Direction

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

Summary:

This 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 procedure (which was reflected in the interim practice direction that this practice direction replaces) was initially 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. The procedure has been revised to reflect experience with it, and to accommodate amendments to s. 525 contained in An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, S.C. 2019, c. 25 (Bill C-75).

The 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 (or 30 days for a young person detained on charges for which they are being prosecuted by way of summary conviction), 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. Crown or defence counsel may appear by telephone or video-link (if easily available).

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 email as a separate document attachment to the Supreme Court Scheduling Detention Review Coordinator at detention.review@bccourts.ca.

Notice of the Scheduling Hearing

3. The Court will review the Application and schedule 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 as follows:
 - a. if the Public Prosecution Service of Canada has conduct, to the designated central email address provided for this purpose: federal525notices@ppsc-sppc.gc.ca;
 - b. if the British Columbia Prosecution Service has conduct, to the designated central email address provided for this purpose: 525bcps@gov.bc.ca, or to the designated email address for the relevant Regional Crown Office;
 - c. to defence counsel, if known; and

- d. to the Legal Services Society, if its assistance is required.
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.

Intervening Events before the Scheduling Hearing

8. If one of the following events intervenes, defence counsel may notify the Court by email to the Detention Review Coordinator no later than 4:00 pm the day before the date of the Scheduling Hearing with a copy to the designated central email address for Crown counsel with conduct of the matter:
- a. the accused person has been released from custody;
 - b. the accused person has entered a guilty plea in relation to all of the matters that are the subject of the Application;
 - c. the accused person has been sentenced in relation to all of the matters that are the subject of the Application; or
 - d. the trial of the accused person in relation to all of the matters that are the subject of the Application has commenced.
9. If Corrections has information that one of the intervening events indicated above has occurred before the date of the Scheduling Hearing, Corrections may notify the Court by email to the Detention Review Coordinator.
10. Upon receipt of complete information that one of the intervening events indicated above has occurred, the Detention Review Coordinator will reply to Crown and defence counsel, and confirm that the matter has been removed from the list. The Court will consider the application concluded.

Consent Regarding Ineligibility

11. If at any time during the process, Crown and defence counsel agree that the accused person does not meet, or no longer meets, 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 by email to the Detention Review Coordinator no later than 4:00 pm the day before the date of the next hearing.
12. Upon receipt of a properly completed *Consent Regarding Ineligibility for Detention Review form*, the Detention Review Coordinator will reply and confirm that the matter has been removed from the list. The Court will consider the application concluded.

Adjournment

13. Adjournment of the Scheduling Hearing should be avoided whenever possible so that a Detention Review Hearing is scheduled at the earliest opportunity if the accused wishes to have one.
14. If adjournment of the Scheduling Hearing is nonetheless necessary, defence counsel may adjourn it to a later date on behalf of an accused person without appearing in court, by delivering a completed copy of the *Adjournment Form* attached as **Appendix B**, by email to the Detention Review Coordinator no later than 4:00 pm the day before the date of the Scheduling Hearing with a copy to the designated central email address for the level of Crown counsel with conduct of the matter.
15. Upon receipt of a properly completed *Adjournment Form*, the Detention Review Coordinator will reply to Crown and defence counsel, and confirm the new date and time of the Scheduling Hearing.

Waiver

16. If at any time during the process an accused person wishes to waive their right to have a detention review under s. 525, defence counsel may complete the *Waiver Form* attached as **Appendix C**, and submit it on behalf of the accused person by email to the Detention Review Coordinator with a copy to the designated central email address for the level of Crown counsel with conduct of the matter.
17. Defence counsel must retain the original *Waiver Form* until the earliest of:
 - a. the date on which the proceeding, including any appeals, is finally disposed of;
 - b. the date on which the appeal period for the proceeding has expired if no notice of appeal respecting the proceeding has been filed within that period, and
 - c. the date on which the Court requests that the original be filed.
18. If the Court requests that counsel file the original *Waiver Form*, counsel must do so promptly after the request is made.
19. Upon receipt of a properly completed *Waiver Form*, the Detention Review Coordinator will reply and confirm that the matter has been removed from the list. The Court will consider the Application concluded.

The Scheduling Hearing

20. 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.

21. Unless the Court directs otherwise, the accused person will appear at the Scheduling Hearing by video-link from the institution where they are detained.
22. Unless the Court directs otherwise, Crown and defence counsel may appear by telephone using the conference call dial-in information provided by the Detention Review Coordinator in the email attaching the Notice of Scheduling Hearing.
23. Unless the Court directs otherwise, defence counsel is not required to appear at the Scheduling Hearing (although they may do so if they wish), so long as, no later than 24 hours before the date and time set for the Scheduling Hearing, they provide Crown counsel with the necessary information to advance the case through the Scheduling Hearing process.
24. The accused person is not required to appear at the Scheduling Hearing if a counsel designation notice has been filed with the Court (either a new notice or a copy of a counsel designation notice filed at the Provincial Court), and designated counsel appears in person, or by video-link or telephone, on the accused's behalf.
25. 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. specify by what means the accused person will appear at the Detention Review Hearing so that the necessary arrangements can be made;
 - c. 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;
 - d. address the issue of materials (e.g., transcripts, reasons, exhibits, etc.) that will be required at the Detention Review Hearing and, if necessary, order the materials; and
 - e. canvass whether an interpreter will be required.
26. 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.
27. If Crown and defence counsel agree on the location and timing of the Detention Review Hearing, counsel should contact Supreme Court Scheduling for the relevant location and canvass available dates for the hearing in advance of the Scheduling Hearing. If counsel do not pre-arrange dates and location, the matter will be set for a s. 525 Fix Dates Appearance

in the nearest Supreme Court Scheduling hub to set a date for the Detention Review Hearing.

The Detention Review Hearing

28. The Detention Review Hearing will take place at the time and date and in the court location scheduled at the Scheduling Hearing or Fix Dates Appearance, unless subsequently scheduled or changed in the usual manner. Court locations outside of Vancouver and New Westminster operate on the assize system; therefore, all matters are booked for the “week of” and counsel should be prepared and ready to proceed any day during that week.
29. 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.
30. 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 wishes to appear in person, or is not represented by counsel in the hearing;
 - b. oral 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.
31. 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 notice has been filed with the Court (either a new notice or a copy of a counsel designation notice filed at the Provincial Court), and designated counsel appears personally on the accused’s behalf.
32. Crown counsel must bring a copy of the following documents to the hearing for the presiding judge:
 - a. the information(s) or indictment; and
 - b. the accused’s criminal record (if relevant).
33. Counsel wishing to rely on exhibits from earlier bail proceedings who did not address the matter at the Scheduling Hearing as noted above, should arrange with the court registry well in advance of the Detention Review Hearing for copies of the exhibits, or originals if necessary, to be made available to the presiding judge at the hearing.
34. If Crown or defence counsel wish to file, in advance of the hearing, documents they will seek to rely on during the hearing, the documents must be filed in the registry where the

Detention Review Hearing is to take place. Alternatively, so long as the materials are not voluminous, counsel may deliver them electronically to the relevant Supreme Court Scheduling email address for the location where the Detention Review Hearing is to take place. If possible, documents should be delivered to the registry or Supreme Court Scheduling two days before the date of the Hearing.

Directions for Expediting the Proceedings

35. If the presiding judge at the Detention Review Hearing gives directions under s. 525(4)(a) for expediting the proceedings, the court clerk will cause a *Direction Under s. 525(4) of the Criminal Code* to be generated recording the directions made.
36. If a *Direction* is signed by the presiding judge, or in their absence, another judge of the Court, the court clerk will cause the *Direction* to be filed and will send a copy of the filed *Direction* by email to the Detention Review Coordinator.
37. In cases where the trial will be in the Provincial Court, the Detention Review Coordinator will provide a copy of the *Direction* to the Office of the Chief Judge, to the attention of the Associate Chief Judge, and will also provide a copy to Crown and defence counsel.
38. In cases where the trial will be in the Supreme Court, the Detention Review Coordinator will provide a copy of the *Direction* to the Chief Justice, Associate Chief Justice or their designate, and will also provide a copy to Crown and defence counsel.

Requirement for a Further Detention Review Hearing

39. If the presiding judge at the Detention Review Hearing requires a further Detention Review Hearing within 90 days or any other period as provided for in s. 525(4)(b), the court clerk will cause a *Direction Under s. 525(4) of the Criminal Code* to be generated, recording the direction made.
40. If a *Direction* is signed by the presiding judge, or in their absence, another judge of the Court, the court clerk will cause the *Direction* to be filed and will send a copy of the filed *Direction* by email to the Detention Review Coordinator.
41. The Detention Review Coordinator will prepare and deliver a Notice of Scheduling Hearing to Crown and defence counsel, with a copy to Corrections, for a Scheduling Hearing approximately seven (7) days in advance of the date specified by the judge who made the direction for a further Detention Review Hearing.
42. The further Detention Review Hearing will be scheduled at the Scheduling Hearing.

Heather J. Holmes
Associate Chief Justice

Appendix A – Consent regarding ineligibility for detention review

Vancouver Registry
No. VA _____ W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

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

Appendix B – Adjournment Form

Vancouver Registry

No. VA _____ W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

v.

_____ (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

ADJOURNMENT FORM

ADJOURNMENT

On behalf of the accused, I request that the Scheduling Hearing be adjourned to _____.
(Please note that Scheduling Hearings take place each week **only** on Tuesdays.) *date*

Counsel will appear on that date and the accused:

- will appear by video-link.
- will not appear at the Scheduling Hearing.

The adjournment is requested for the following reasons:

- I have requested relevant material from the registry, including transcripts, reasons or exhibits from prior bail hearings, but have not yet received it.
- The accused has not yet had an opportunity to obtain legal advice regarding whether to proceed with the s. 525 detention review.
- Other (*explain*) _____

Counsel Name (print): _____

Counsel Signature: _____

Date: _____

Appendix C – Waiver Form

Vancouver Registry

No. VA _____ W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

v.

_____ (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

WAIVER FORM

WAIVER

The accused _____ (*print name of accused person*) understands that they are entitled to have their continuing detention in custody reviewed by a Justice of the Supreme Court of British Columbia; they are entitled to be personally present when the Court conducts the review; and by instructing counsel to deliver a waiver they are giving up their right to have their continuing detention in custody reviewed under s. 525 of the *Criminal Code* for this application.

I, _____ (*print name of counsel for accused*) confirm that I am counsel for the accused. I confirm that I have reviewed the relevant information and material regarding the circumstances of the accused's present detention. I further confirm that I have provided advice to the accused regarding their right to a detention review under s. 525 of the *Criminal Code*, including the nature of the right and consequences of a waiver, and the accused waives that right for this application.

Counsel Name (print): _____

Counsel Signature: _____

Date: _____