



Supreme Court of British Columbia

CRIMINAL PRE-TRIAL CONFERENCE PROJECT INFORMATION SHEET

The increasing length and complexity of criminal trials and the impact these trials have on the cost, effectiveness, and efficiency of the justice system continues to be cause for concern. People are innocent until proven guilty and they are entitled to a fair and public trial where the Crown is obliged to prove its case beyond a reasonable doubt to an independent and impartial decision maker. There can be no argument that criminal trials take longer and are more complicated than they used to be. There are a number of factors that contribute to this:

- the nature of the charge or charges
- the number of accused
- issues of legal aid and other funding issues which need to be resolved at the beginning of a proceeding
- the increase in the number of self-represented accused
- the investigative techniques or tools used to investigate the offences giving rise to the charges
- the quantity of the information or evidence gathered in the course of the investigation
- whether information gathered in other investigations is relevant to an issue in the particular case
- the rules of evidence or constitutional principles in play in a case
- whether the evidence was gathered in a way that engages consideration of a violation of an accused's *Charter* rights
- whether the trial is by jury or a judge sitting alone
- whether interpreters are required for the accused or for witnesses in the trial
- the increasing prevalence of expert evidence of witnesses to assist the triers of fact in understanding scientific evidence otherwise not readily understood
- whether particular types of evidence requires a judge to hear the evidence and decide on its admissibility before it is heard for a second time before a jury
- evidence involving large volumes of documents which must be individually identified and explained

There are many approaches for dealing with the problems associated with the length and complexity of criminal proceedings. In the Supreme Court the approach that has been adopted is active case management by judges of criminal proceedings soon after the proceeding arrives in the Supreme Court. The theory of active case management is that a proceeding will proceed more efficiently if it is managed effectively from its beginning because issues that have the potential to derail a scheduled trial can be identified and addressed without disruption to the scheduled trial.

In 2010, the Supreme Court introduced an active case management process for criminal proceedings. The Criminal Pre-Trial Conference Project was introduced as a pilot in four registries where the most criminal trials have traditionally been held: Vancouver, New Westminster, Chilliwack and Kamloops. The key features of the Criminal Pre-Trial Conference Project are:

- pre-trial conferences occur at an early stage of the proceeding,
- pre-trial conferences are conducted by the trial judge or by other judges experienced in criminal law,
- the Crown prepares a written summary of its case identifying or highlighting potential evidentiary issues or pre-trial motions

During the pre-trial conference the judge, Crown and defence talk about:

- issues with evidence (e.g., search warrants, statements, etc.)
- pre-trial rulings the judge will be asked to make
- schedules for pre-trial applications,
- trial length
- using technology such as video conferencing for out-of-town or out-of-country witnesses

In 2012, the Court completed a comprehensive evaluation of the Project. The evaluation concluded that active case management and the judicial resources it requires has yielded positive results: more criminal trials proceeded as scheduled and there were fewer unexpected adjournments or interruptions. The summary prepared by the Crown, in particular, is considered by all to be an invaluable management tool for identifying and addressing evidentiary and other issues that, left unattended, would have a negative impact

on trial efficiency. The evaluation recommended the expansion of the Project throughout the province. Beginning later this year and continuing into early 2013, the Project will be expanded to include criminal proceedings in all Supreme Court registries.

Much of the focus of the pre-trial conference process is to avoid unnecessarily long trials. Whether a trial is unnecessarily long is not something which can be measured solely by its length. Some relatively short trials may be unnecessarily long while some very lengthy ones may be efficiently managed and reach an appropriate just and, in context, timely result. The difficulty in assessing the optimal length of a trial is that its length is highly dependent on a number of factors many of which are outside of the control of the court. The combined result of those factors can be trials which are long by any objective measurement, but which are nonetheless no longer or less efficient than required in a judicial system focussed on achieving a fair and just result.

Comparisons are often made between our judicial system as it is now and the judicial system as it existed in past generations with a focus on the relatively short trials of those eras. The fact is, however, that we live in a much more complicated and sophisticated society than existed 50 or even 30 years ago. The trial process reflects that increase in complexity and sophistication. Thus, just as the methods, scope and imagination of criminal enterprises have evolved and spread, so have the methods and scope of detecting them and prosecuting them. The concept of the police undertaking projects involving years of investigation into particular criminal organizations and undertakings is relatively new. Those investigations require the management of vast quantities of information and evidence in the context of a trial process which is driven by the need for a principled analysis according to the specific issues of a particular case. This simply takes longer. When years of investigation and prosecutorial preparation were required before the case could be brought to trial, it is not reasonable to expect that the resulting trial will be completed in a few days or weeks.

The essence of any good legal process lies in its capacity to draw distinctions among cases to allow each case to be dealt with and decided according to its particular facts and the

applicable law. The value and strength of the Criminal Pre-Trial Conference Project is that it establishes rigorous management of trials on a case-by-case basis in order to ensure that criminal proceedings proceed efficiently and effectively while still adhering to the fundamental principles of our criminal justice system: an accused is innocent until proven guilty and the Crown is required to prove its case at a fair and public trial before an independent decision maker.