



SUPERIOR COURT OF JUSTICE

RECOMMENDED INSTRUCTIONS TO SELF-REPRESENTED ACCUSED PERSONS BEFORE THE PRE-TRIAL CONFERENCE

What is a Pre-trial Conference?

A pre-trial conference is a meeting between a judge of the Superior Court of Justice, a Crown Attorney, lawyers for accused persons, or the person charged when they are not represented by a lawyer. The conferences are mandatory, pursuant to the *Criminal Code* and the Rules of Court. Where any accused person is not represented by a lawyer, the conference is held in a courtroom. However, the courtroom is closed to the public, and only those attending the conference and court staff may attend. While the conference will be recorded by a court reporter or monitor for the benefit of the pre-trial judge, transcripts of the conference may not be ordered without notice to the other party(ies), and the approval of the pre-trial judge. Where a transcript is ordered, it is subject to a publication ban, and the contents may not be published or disseminated in any way.

Where all accused persons are represented by lawyers, the conference is generally held in a pre-trial room, the judge's office, or another room in the courthouse. The accused persons do not attend the conference.

Whether the pre-trial conference is in or outside of the courtroom, any discussions that occur cannot be repeated at trial, unless all parties agree. Any statements made by an accused person at the conference are not admissible at the trial.

The judge presiding at the pre-trial conference cannot preside at the trial without the agreement of both the Crown and accused person, although he or she will prepare a report to the trial judge. The report cannot make any reference to resolution discussions.

What is the Purpose of the Pre-trial Conference?

All pre-trial conferences address two issues: case management, and resolutions. Case management includes how the trial will be conducted, such as: will it be a judge and jury trial or judge alone; if it is a jury trial, will there be a challenge for cause requested by the accused, where he or she wants to question potential jurors regarding bias or prejudice against the accused because he or she is a member of a visible minority, or as a result of pre-trial publicity etc; will there be pre-trial applications regarding the admissibility of evidence? All of

the areas to be addressed are covered in the pre-trial form referred to later, which must be completed before the pre-trial conference.

Resolution discussions include the Crown presenting their position on sentence if the accused were to plead guilty before trial, and what sentence they would ask the trial judge to impose if the accused is convicted after a trial. It also includes what charges the Crown would want the accused to plead guilty to, if there is more than one charge. It is essential in every case that the accused person knows what sentence would be sought if a plea of guilty were entered, and what sentence would be sought after a trial. The pre-trial judge will also consider any suggestions from the accused person in regard to resolution, and may provide his or her opinion as to the appropriate sentence.

Pre-trial conferences are intended to promote a fair and expeditious trial, where it is not possible to resolve a case. The pre-trial judge will identify whether there are issues that are not in dispute between the accused and the Crown, how to simplify the issues that remain in dispute, the possibility of obtaining admissions and agreements on evidence to be introduced, and the estimated duration of the proceedings. The pre-trial judge is also entitled to make orders, to ensure the trial proceeds in an orderly manner.

The Pre-trial Forms

The Rules of Court require counsel for the Crown and for the accused to complete a pre-trial conference form. Self-represented accused persons are required to complete and sign the form. The Crown Attorney will provide a copy of the Crown's form to the accused at least 10 days before the pre-trial conference. Accused persons who do not have counsel must complete the form, and provide a copy to the Crown and to the Trial Coordinator at least 5 days before the date of the pre-trial conference. Even if the Crown does not provide their completed form, accused persons are required to complete the form to the extent they are able, and comply with the filing requirements. The pre-trial conference judge will review the forms before the conference.

Copies of the pre-trial form are available in the Assignment Court from the Registrar, at the Trial Coordinator's Office, and on the court's website. The Rules of Court, which are available on the Court's website, require the forms to be completed, and positions taken on all issues that it is reasonably anticipated will arise at the trial. There is only one set of rules that requires the forms to be completed and signed. There is not one set of rules for accused persons who are represented by counsel, and a second set for those who are not.

If counsel or a self-represented accused person indicates on the pre-trial conference form that they will not be bringing a pre-trial application, and then seeks to bring it at trial, the presumption is it will not be heard, unless they have notified the prosecutor and arranged for a further pre-trial conference. It will be for the trial judge to determine if he or she will hear the application.

Preparation for the Pre-trial Conference

Accused persons who are representing themselves should make sure they have a complete copy of the disclosure provided by the prosecution, and review it before the pre-trial conference. They should also review any transcripts or notes they have from the preliminary inquiry, if one was held. In preparing for the pre-trial conference, accused persons should complete the pre-trial conference form, be prepared to discuss the issues raised in the form, and prepare a list of any areas they wish the pre-trial judge to clarify. In addition, if the self-represented person intends to call witnesses at the trial and is having problems locating the witnesses or in securing their attendance at court, these issues can be addressed at the pre-trial conference.

The Right to Counsel

Every person charged with a criminal offence has the right to retain and instruct a lawyer for trial. It is in the best interest of accused persons that they retain a lawyer. In Ontario, persons charged with criminal offences can retain a lawyer by paying him/her a cash retainer or with the assistance of Legal Aid Ontario provided he/she qualifies under the Legal Aid criteria. If you want to retain a lawyer and have been unable to do so, it is an issue that can be addressed at the pre-trial conference.