



The Provincial Court of Alberta

NOTICE TO THE EDMONTON CRIMINAL BAR – CROWN AND DEFENCE

CHANGES IN COURTROOMS 265, 356 AND CMO

Effective December 2, 2013, several changes will be implemented in the Edmonton Provincial Criminal Court aimed at making the docket and intake phase more effective. The objective is to eliminate unnecessary and unproductive court appearances and to facilitate a more effective means of addressing those impediments faced by accused persons in scheduling dates for disposition or hearing. The changes will affect practices in Courtrooms 265, 356 and at the Case Management Office (CMO). Changes in courtrooms 268 and 267 will be addressed separately, later.

Courtroom 265

All accused persons in custody at the time of the first court appearance will continue to appear for the first appearance in Courtroom 265 (if not domestic or drug-related). However, once an accused has been ordered released in courtroom 265, or once counsel has filed a Designation of Counsel, any subsequent remands until a hearing date is set, will be returnable at either the CMO or in courtroom 356. The net effect of this is that all persons appearing in courtroom 265 will be persons in custody with the exception of those who have been released from custody since their last 265 appearance (for example, where a cash bail has been met or where the accused is released by the Court of Queen's Bench).

The primary function of courtroom 265 will be to serve as a bail court and a court dealing with in-custody early dispositions.

Matters in courtroom 265 will be adjourned for as long as is reasonably necessary to address the purpose of the adjournment. On the return date, however, it will be expected that all reasonable steps will have been taken by all parties involved to meet the purpose of the adjournment. Accused persons seeking to adjourn a matter will be encouraged to allow sufficient time for whatever is intended to be done to be accomplished; adjournments that are unrealistically short serve no purpose. If a matter is adjourned for a longer period than proves to be necessary, the matter may be brought forward on short notice, either to courtroom 265 (to confirm a hearing date or for a plea) or, alternatively to courtroom 356 where some problem needs to be resolved.

Once counsel is retained, the counsel will be strongly encouraged to file a Designation of Counsel. If that is done, any following appearances need not be in courtroom 265 unless the nature of the appearance falls outside the scope of the Designation (eg., evidence is being called).

It is anticipated that the elimination of unproductive court appearances will result in more time and opportunity for both Crown counsel and Duty counsel or Defense counsel to deal more promptly and effectively with the matters properly in courtroom 265. In the longer term it may also lead to bail matters that are currently moved to courtroom 356, being moved back to courtroom 265. In the short term, however, longer bail matters will still be allowed to be scheduled into courtroom 356.

It should be noted that there will no longer be a formal “six week protocol” *per se* in that there is no magic in ‘six weeks’; however, the basic concept underlying that initiative will remain and is referenced above. Within limits, matters will be put over as long as necessary to do all those things necessary to enter an election or plea and to schedule a hearing or disposition date, whether that is one week, three weeks or six weeks. However, the Court will expect both the Crown and Defence counsel to do whatever is required in order for the accused to schedule a date, within that time.

The outer limit within which the Court will expect either a disposition or hearing date to be scheduled is **three months from the date of the first appearance**. Particularly where an accused is in custody, it will be expected that a date will be scheduled well before then. In cases where an accused has been arrested after failing to appear in court, which is often beyond three months from the first appearance, the Court will generally allow no more than one remand appearance to schedule or reschedule a hearing or disposition date.

The CMO

As a general rule, all appearances by an accused who is out of custody or who has designated counsel to appear on his or her behalf, will be at the CMO unless (a) the accused or counsel asks that the matter be placed before a judge for disposition or some other reason, (b) a court otherwise directs, (c) a date for hearing or disposition has been scheduled or (d) two months have elapsed from the time the matter first appeared in the CMO, following which the matter will be sent to courtroom 356.

Matters scheduled in the CMO (like matters in courtrooms 265 and 356) can be pre-booked remotely. Remote booking will be encouraged.

In some cases a matter will now be remanded to the CMO from another courtroom (such as 265) even though the matter is ‘dated’ – ie., beyond three months from the first appearance. This will afford the accused an opportunity to either remotely book or attend at the CMO counter to book a disposition or hearing date. However, if such a matter has not been pre-booked by the return date, the matter will be sent to courtroom 356 for the fixation of a date.

Accused persons who are unrepresented by counsel will be able to schedule matters (dispositions and hearings) at the CMO. However, whenever a trial or preliminary hearing is scheduled and the accused does not have counsel, the scheduler will also schedule an interim ‘confirmation date’ in courtroom 356.

Courtroom 356 (Required Appearance Court)

Where an accused person, with or without counsel, wishes to summarily resolve a matter that is scheduled for the CMO, the matter will be sent to courtroom 356 for summary resolution. If not unduly complicated, the matter will be concluded in courtroom 356 at that appearance.

For the time being, a limited number of lengthier bail matters will continue to be scheduled into courtroom 356.

Courtroom 356 will be a problem solving court, not a docket court. As a general rule, apart from the two exceptions described above, matters will not appear in Courtroom 356 unless a problem requiring judicial intervention has been identified in the pre-trial stage, either by a court, counsel for the Crown or the Defence, the accused, or through the passage of time.

Any matter that has ‘timed out at the CMO’ (ie., two months have passed since the first appearance at the CMO or the matter is otherwise beyond three months from the first appearance or no date has been pre-booked when sent to the CMO from another courtroom) will be considered a problem warranting judicial intervention.

The judge in courtroom 356 will attempt to address the problem by, for example, setting a deadline or fixing a hearing date to resolve the issue. The court will also, however, generally require that either a date for disposition or for trial or preliminary inquiry is also scheduled.

In practical terms, when counsel appears on a matter in courtroom 356, counsel must **always** be prepared to (a) elect or plead if no election or plea has been entered and (b) schedule a date for disposition or hearing, with an interim appearance if pre-hearing issues remain. These expectations will apply to both Crown counsel and Defence counsel. The Crown will be expected to have made available all of the generally expected information required by the Defence to elect, plead and schedule a hearing date, which includes timely disclosure, a statement of the Crown’s position regarding sentence in the event of summary resolution and the available dates of any assigned prosecutor. In turn, the Defence will be expected to have diligently sought any such information, or any other information believed necessary in order to enter the election and plea and to schedule a date. If counsel does not feel sufficiently instructed to elect or plead, then the accused should be advised to be personally present as an election or plea may be deemed.

Only in the most exceptional circumstances will a matter in courtroom 356 be adjourned further without a hearing date or disposition date being set. Matters adjourned for consideration of alternative measures or mental health diversion or for completion of same will be an exception.

It is recognized that that in some cases, matters will appear in courtroom 356 where disclosure may not be complete, where counsel expects to be retained but has not yet been fully retained or where counsel has only recently been appointed or retained, circumstances that commonly cause reluctance to schedule a date for hearing.

Where counsel have only recently been retained (for example, within the week), this will generally be considered an exceptional circumstance, justifying a further short adjournment for counsel to take instructions, recognizing that by this time, the Crown will be expected to have the disclosure, any offer and the assigned prosecutor's schedule readily available.

Where counsel have not yet been fully retained but expect to be retained, this should not impede the fixation of a trial date. Provided counsel clarifies the limited nature of the retainer, there will generally be no reason why a trial date cannot be fixed with an interim date scheduled to confirm whether counsel is yet willing to be recorded as counsel of record and for the accused to be advised of his or her obligations accordingly.

In the case of outstanding disclosure, the presiding judge will assess whether the missing disclosure presents an impediment to the accused's ability to make the threshold decision of how to elect or plead. If so, then a disclosure hearing can be scheduled, although only where the provincial court has jurisdiction. In most cases, the Court will likely direct that sufficient time for a trial be set, with an interim appearance date scheduled in courtroom 356 to manage the matter.

It is recognized that under these new procedures, more matters will be scheduled for preliminary hearing or trial than will actually proceed to trial or preliminary inquiry. This is not a new concept, however, and frequently occurs under existing practices. There will be ample opportunity for accused persons or counsel to bring matters forward or to otherwise cancel trial time in advance. This will continue to be expected as part of basic professional responsibility. Also, when matters are scheduled for trial or preliminary hearing from courtroom 356 in circumstances where an accused or counsel is uncertain concerning the election or plea, the Court will encourage or, alternatively, require an interim appearance or appearances to confirm instructions and trial readiness.

Ongoing Adjustments

As indicated in earlier memos during the consultation phase, the Court intends to meet regularly with the bar over the next several months as these changes are being implemented so that any adjustments that will improve the processes can be made. Counsel's input and suggestions are always welcome.

Larry G. Anderson
Assistant Chief Judge