NPP#2017-01
April 25, 2017

COURT OF QUEEN'S BENCH OF ALBERTA

NOTICE TO THE PROFESSION AND PUBLIC

CHARTER APPLICATIONS IN CRIMINAL CASES INCLUDING SECTION 11(B) UNREASONABLE DELAY APPLICATIONS

This Notice to the Profession applies to all criminal proceedings in the Court of Queen's Bench of Alberta, but is subject to any order made by a judge in a specific criminal case. All references to a rule or rules in this Notice refer to the *Court of Queen's Bench of Alberta Criminal Procedure Rules* ("the Criminal Rules").

The purpose of this Notice to the Profession is to confirm and expand upon Criminal Rule 14 dealing with applications for a Charter remedy. In particular, this Notice is to ensure that s.11(b) applications before the Court of Queen's Bench of Alberta are scheduled and conducted in a fair and effective manner.

In ***R. v. Jordan***, 2016 SCC 27, the Supreme Court of Canada established a new framework for the consideration of unreasonable delay applications brought pursuant to s.11 (b) of the *Canadian Charter of Rights and Freedoms*. The decision included guidelines relative to cases that were already in the justice system prior to the release of the decision on July 8, 2016.

As set out in Criminal Rule 14, an application for a remedy based on an alleged violation of an accused's rights under the *Canadian Charter of Rights and Freedoms* must be made in Form CC1 and in accordance with Division 1 of the Criminal Rules, except that the application and supporting documents must be served on the parties and the Court 7 days prior to the pre-trial conference or 60 days before trial, whichever is earlier, or as directed by the Court.

In the case of s.11(b) unreasonable delay applications, all such applications must be scheduled for hearing at least 60 days in advance of the trial so as to allow these applications to be determined well before the trial and, in most instances, before the date on which the parties must serve and file materials in support of other pre-trial applications.

If the s.11(b) application is allowed and a stay is granted, the court and the parties will have sufficient time to re-allocate the time that was set aside for the trial but which is no longer required. In such circumstances, the parties will be spared the time and expense of preparing and filing materials for other pre-trial applications. If the application is dismissed, cases will be ready to proceed on their scheduled trial date. This is particularly important where a jury panel have been summonsed for the matter.

Part I: Scheduling of s. 11(b) Applications

A. Pre-trial Conference

1. Where the Defence intends to bring a s. 11(b) application, the Defence must do so at least 7 days before the pre-trial conference. Where the intention to bring a s. 11(b) application is not included in the CC7 form, and is not raised during the pre-trial conference, the Defence must provide written notice of this change in position to the Crown, any other co-accused, and the Queen's Bench Criminal Trial Coordinator in the applicable judicial district, and arrange for a further pre-trial conference as soon as practicable, as required under Part 3 of the Criminal Rules.

2. The Court may permit and/or direct that this pre-trial conference be conducted by teleconference.

3. The pre-trial conference judge will inquire about and discuss any matter that may promote a fair and expeditious hearing of the s. 11(b) application including, but not limited to, (i) the scheduling of the application; (ii) the parties' positions as to the cause of any particular periods of delay in the case, including whether the delay is attributable to the Defence or to "extraordinary circumstances", as defined in ***R. v. Jordan***, and (iii) the materials required to be filed in support of the application.

4. If the assigned trial judge is not available to hear the Jordan application for whatever reason, the Chief Justice will appoint a case management judge to hear the application, pursuant to s. 551.1 of the *Criminal Code*.

B. Hearing of the s. 11(b) application

5. Unless otherwise directed by a judge, all s. 11(b) applications must be scheduled to be heard at least 60 days before the first scheduled day of trial or, where pre-trial applications are scheduled to be heard separately in advance of the trial, at least 60 days before the first scheduled day of pre-trial applications.

6. Before filing a s. 11(b) application, the Applicant must apply for the appointment of a s.551.1 Case Management Justice (see NP #2012-14) and a hearing date from the Court. Before seeking this date from the Court, the Applicant will be expected to consult with the Crown and any other accused to canvass all parties' common available dates and a reasonable time estimate for the duration of the hearing of the application.

7. Unless otherwise directed by a judge, the materials in support of the application must be filed and served as follows:

> a) The Applicant's materials must be filed at least 21 days before the hearing of the application; and

b) The Respondent's materials must be filed at least 7 days before the hearing of the application.

c) Any rebuttal material must be filed by the Applicant at least 2 days before the hearing of the application.

Part II: Supporting Materials in Charter Applications

A. Written Briefs

8. Unless otherwise directed by a judge, a written brief of argument is required from each party relative to all alleged breaches of s.11(b) of the *Charter*. The brief should not exceed 20 pages in length, unless otherwise directed. Written briefs in relation to all other alleged breaches of the *Charter* may be directed by the Court. Counsel are required to file joint books of authorities. Those portions of decisions specifically relied upon must be highlighted.

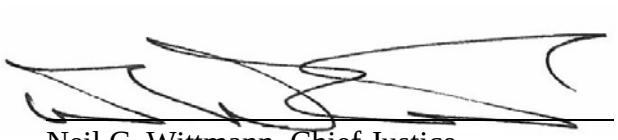
9. The filing deadlines prescribed in paragraph 7, above, apply to all *Charter* applications.

B. Transcripts

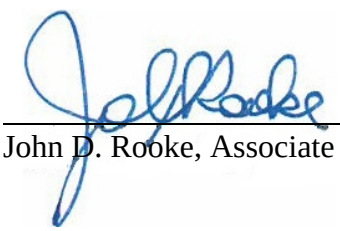
10. The Court wants to strongly discourage the filing of transcripts relative to each and every court appearance leading up to the s.11(b) application. The parties shall make all reasonable efforts to come to an agreement on the total delay to be considered in a particular case, as well as an agreement on the periods of delay attributable either to the defence or to "exceptional circumstances", as defined in ***Jordan***. Where the parties reach such an agreement, an agreed statement of fact shall be filed. In the absence of agreement, the parties are required to provide a clear statement of their position relative to these two periods of delay.

11. In transitional cases, (ie. cases with a charge date before July 8, 2016), the written material (brief or agreed statement of facts) should clearly attribute each period of time in the proceeding to one of the five categories of delay identified in ***R. v. Morin***: (i) inherent time requirements; (ii) delay attributable to the accused/defence; (iii) Crown delay; (iv) institutional delay and (v) other reasons for delay). The parties shall make all reasonable efforts to come to an agreement on the time to be attributed to each of these categories of delay.

12. If transcripts of key appearances are required, only that portion of the transcript relating to discussions about scheduling, adjournments and the selection of the next court date need be provided. The party seeking to rely on a transcript is required to file it in conjunction with its other written materials.



Neil C. Wittmann, Chief Justice



John D. Rooke, Associate Chief Justice