

COURT OF KING'S BENCH
_____ Centre

BETWEEN:

HIS MAJESTY THE KING

(applicant or respondent)

-and-

(applicant or respondent)

PRE-TRIAL CONFERENCE BRIEF

*(name, address, email address and telephone
and fax numbers of the person filing the document)*

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PRE-TRIAL CONFERENCE BRIEF

Crown brief: _____ (prepared by and date)

Defence brief: _____ (prepared by and date)

(Counsel for: _____ , if multiple accused.)

Have the parties discussed the issues raised in this Form after the committal for trial? Yes No

Charges:

Election: Judge and Jury Judge Alone

Is a re-election anticipated? Yes No

Will the Crown consent? Yes No

1 Chronology

(a) Date(s) of offence(s):

(b) Date of arrest:

(c) Date of committal for trial:

(d) Date indictment filed:

2 Form of Judicial Interim Release

(a) Is the accused detained in custody on this/these charges? Yes No

(b) Is the accused detained in custody on any other charges? Yes No

3 Preliminary Inquiry

Waived: Yes No

Length: _____

Transcript ordered: Yes No

DISCLOSURE

4 Disclosure

Complete: Yes No

(a) Outstanding issues:

(b) When will outstanding disclosure be provided to defence?

5 Third Party Records Applications

(a) Relying on:

section 278.3 of the Code: Yes No

O'Connor: Yes No

(b) Nature of records:

(c) Time estimate for *voir dire*: _____

6 Removal of Accused's Counsel

Will the Crown be seeking removal of the accused's counsel (e.g. alleging a conflict of interest)? If so, explain.

MENTAL DISORDER

7 Mental Disorder Questions

(a) Will the issue of not criminally responsible due to mental disorder be raised at trial?

By the Crown? Yes No By the defence? Yes No

If raised, will the application be opposed? Yes No

(b) Is there an issue of the accused's fitness to stand trial? Yes No

RE-TRIALS

8 Evidentiary Rulings from Previous Trial

If this is a re-trial of a charge following a mistrial, do any of the parties take issue with the evidentiary rulings from the previous trial (section 653.1 of the Code)? Yes No

PRE-TRIAL ISSUES

9 Pre-trial Motions

(a) Quash indictment or count on the indictment: Yes No

(b) Sever count(s) in indictment: Yes No

(c) Sever accused: Yes No

(d) Change of venue: Yes No

(e) Amendment(s): Yes No

(f) Other:

10 Non-evidentiary Charter Issues

(a) Challenge to legislation or common law provision:

Specifics of challenge:

Can the challenge be heard in advance of the trial? If so, on what evidentiary basis?

(b) Application for remedy under subsection 24(1) of the Charter:

Grounds:

(c) Has notice of a constitutional question been served? Yes No

Time estimate for hearing of application:

11 Applications to Exclude Evidence Under Subsection 24(2) of Charter

(a) Evidence sought to be excluded:

(b) Charter sections to be relied on:

(c) Overview of defence position:

(d) Overview of Crown position:

(e) Time estimate for *voir dire*: _____

12 Intercepted Private Communications

(a) Does the Crown seek to introduce wiretap evidence? Yes No

(b) Brief overview of evidence:

(c) Does the defence require a *voir dire* to determine admissibility? Yes No

(d) Will the defence apply to open the sealed packet? Yes No

(e) Brief overview of defence position:

(f) Will the defence be making a *Garofoli* application? Yes No

(g) Is voice identification an issue? Yes No

(h) Time estimate for *voir dire*: _____

13 Statements of Accused

(a) Will the Crown be tendering a statement of the accused as part of its case? Yes No

(b) Will the Crown wish to use the statement to cross-examine the accused? Yes No

(c) Form of the statement: Oral comments Written Audiotaped Videotaped

(d) Does the defence dispute admissibility? Yes No

(e) *Voir dire* issues:

Recipient as a person in authority: Yes No

Voluntariness: Yes No

Paragraph 10(a) of the Charter: Yes No

Paragraph 10(b) of the Charter: Yes No

Section 7 of the Charter: Yes No

(f) Brief summary of the defence's position:

(g) If the statement was audiotaped or videotaped, has a transcript been provided to the defence?
Yes No

(h) If there are both Charter and voluntariness issues, do the parties agree that a blended voir dire is appropriate?

Crown: Yes No

Defence: Yes No

(i) Time estimate for *voir dire*: _____

14 Witness Statements

(a) Will the Crown be seeking to introduce prior testimony or statements of a witness under section 715, 715.1 or 715.2 of the Code? If so, provide details.

(b) Will the defence contest the admissibility of the evidence or statements? Yes No

15 Principled Exception to Hearsay Rule / K.G.B. Applications

(a) Does the Crown seek to introduce any evidence relying on the principled exception to the hearsay rule? Yes No

(b) If so, what is the nature of the evidence?

(c) Does the defence contest admissibility? Yes No

(d) How does the Crown propose to introduce the evidence on the *voir dire*?

Viva voce evidence: Yes No

Agreed statement of facts: Yes No

Witness statements: Yes No

Transcripts: Yes No

(e) Time estimate for *voir dire*: _____

16 Expert Witnesses

(a) Does the Crown intend to call expert witnesses or tender expert reports? Yes No

(b) Field(s) of expertise:

(c) Issues in respect of which the evidence will be introduced:

(d) Does the defence contest the admissibility of the expert evidence? Yes No

(e) Does the defence contest the expertise of the witness? Yes No

(f) Time estimate for *voir dire*: _____

17 Similar Fact Evidence

(a) Is the Crown seeking to introduce evidence of prior similar acts by the accused? Yes No

(b) Nature of evidence:

(c) Does the Crown seek to have admissibility determined in a pre-trial motion? Yes No

(d) Does the defence dispute admissibility? Yes No

(e) How does the Crown seek to introduce the evidence on the *voir dire*?

Viva voce evidence: Yes No

Agreed statement of facts: Yes No

Witness statements: Yes No

Transcripts: Yes No

(f) Time estimate for *voir dire*: _____

(g) Is the Crown seeking to rely on similar fact evidence with respect to the counts in the indictment?
Yes No

18 Defence Experts

(a) Does the defence intend to call expert witnesses? Yes No

(b) Field of expertise:

(c) Issues in respect of which the evidence will be introduced?

(d) Does the Crown contest the admissibility of the expert evidence? Yes No

(e) Does the Crown contest the expertise of the witnesses? Yes No

(f) Time estimate for *voir dire*: _____

19 Sexual Assault Trials – Section 276 of Code

(a) Will defence be seeking to cross-examine the complainant on prior sexual activity? Yes No

(b) Nature of evidence:

(c) Manner in which defence seeks to establish evidentiary basis on application:

(d) Time estimate for *voir dire*: _____

20 Other Issues That May Require Pre-trial Rulings

(a) Issues:

(b) Will a *voir dire* be necessary? Yes No

TRIAL ISSUES

21 Defences and Triable Issues

Is it reasonably anticipated that any of the following defences and triable issues will be raised? Yes
No

If yes, specify:

- Identity
 - Intoxication by drug or alcohol
 - Accident
 - Alibi
 - Honest but mistaken belief in consent
 - Self-defence
 - Provocation
 - Automatism
 - Duress
 - Other:
-

22 Defence Admissions

Are any of the following issues admitted by the defence? Yes No

If yes, specify:

- Jurisdiction
- Identity of the accused
- Date(s) of the offence(s)
- Continuity of exhibits
- Ownership of property that is the subject matter of the offence
- Value of property that is the subject matter of the offence
- Death or injuries caused by accused
- Nature of drug (*Controlled Drugs and Substances Act offences*)

- Amount of drug possessed is "for the purpose of trafficking" (*Controlled Drugs and Substances Act offences*)
- Value of drug (*Controlled Drugs and Substances Act offences*)

23 Other Factual, Evidentiary or Legal Admissions

Admission and does the defence agree?

- 1. _____ Yes No
- 2. _____ Yes No
- 3. _____ Yes No
- 4. _____ Yes No
- 5. _____ Yes No

24 Competency of Witnesses

- (a)** Does the Crown or the defence intend to call any child witnesses? Yes No
- (b)** Will the Crown or the defence challenge the capacity of any witness to testify? Yes No

If yes, specify name of witness and basis of challenge:

25 Witnesses Under 18 or Who Have Disability

Does the Crown intend to seek an order for a support person under section 486.1 of the Code or any testimonial aid (e.g. a screen) under section 486.2 of the Code? Yes No

If yes:

(a) Provide details:

(b) Does the defence oppose the order? Yes No

26 Publication Bans

Does any party seek a publication ban?

Crown: Yes No

Defence: Yes No

If yes:

(a) Provide details of order sought, media to be notified, timing of hearing and time estimate for hearing:

(b) Does the other party oppose the application? Yes No

If opposed, provide time estimate for hearing: _____

27 Privilege Issues

Will any claim of privilege be asserted in respect of any proposed evidence? Yes No

If yes, provide details:

28 Other Legal Issues That May Arise During Trial

29 Challenges for Cause

(a) Does the Crown intend to challenge jurors for cause? Yes No

If yes, what are the grounds:

(b) Does the defence intend to challenge jurors for cause? Yes No

If yes, what are the grounds:

30 Interpreters

(a) Does the accused require an interpreter? Yes No

If yes, for which language(s)? _____

(b) Do any witnesses require an interpreter? Yes No

If yes, for which language(s)?

31 Special Courtroom Equipment Required

Is any special equipment required (e.g. video equipment)? Yes No

If yes, provide details:

32 Courtroom Security Issues

Are there any special courtroom security issues that need to be addressed? Yes No

If yes, provide details:

33 Other Potential Issues

34 Time Estimates

(a) Anticipated number of Crown witnesses:

(b) Time estimate for the Crown’s case:

(c) Time estimate for the defence’s case:

Date: _____

Signature: _____

1 This Form must be filed by the assigned prosecutor and by counsel for each accused person or, if self-represented, the accused, before the first pre-trial conference or the resolution conference, whichever occurs earlier, unless otherwise ordered.

2 Each party must provide their position on each issue and not indicate they "will advise" or "not as yet", etc.

3 The prosecutor must file this Form and serve it on defence counsel or, if self-represented, the accused, at least 14 days before the pre-trial conference or resolution conference. Counsel or the self-represented accused must file and serve their brief on the prosecutor at least seven days before the pre-trial conference or the resolution conference, regardless of whether the Crown has filed the Form. In cases where the Crown has not filed the Form or has filed it late, defence counsel or the self-represented accused should complete the Form to the extent possible.

4 If any party changes the position taken on this Form, they must provide written notice to the other party and to the pre-trial judge of the change in position. If a party has not indicated that an application or motion will be brought, the presumption is that it will not be heard. The failure to notify the other side and the Court of any application not indicated on this Form will be a factor considered by the trial judge in determining whether the new position has prejudiced the other party and whether the application may proceed.

5 The prosecutor’s copy of the brief must be accompanied by a brief synopsis of the allegations and the theory of the Crown’s case. If the prosecutor is arguing that the accused is liable to an offence as a party, the section of the Code that is being relied on by the prosecutor must be indicated.