

Form 23
PRE-HEARING CONFERENCE REPORT FOR CROWN APPLICATIONS

(Pursuant to Part XXIV)

(Criminal Code, s. 625.1 and Criminal Proceedings Rules, Rule 35)

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No. (if known)

Region

NOTE:

1. This form must be completed in full in all cases, and signed by the assigned Crown counsel, or a Crown counsel authorized to bind the Crown, and by counsel of record for each offender, before the first judicial pre-hearing conference, unless otherwise ordered, or unless the offender will definitely be consenting to the application.
2. Crown and defence counsel are encouraged to discuss the issues to be addressed at the pre-hearing conference in advance of the conference.
3. Counsel must provide their position on each issue, and not indicate they “will advise”, or “not as yet”, etc.
4. Crown must complete this form and fax, or deliver it to defence counsel of record and the Superior Court Trial Office, not later than 10 days before the date scheduled for the pre-hearing conference. Defence counsel must fax or deliver their report to the Crown Attorney and the Superior Court Trial Office not later than 5 days before the date scheduled for the pre-hearing conference, regardless of whether the Crown has filed a form. In cases where the Crown has not filed the form, or has filed it late, defence counsel should complete the form to the extent possible.
5. If any party changes the position taken on this form, which will be provided to the application judge, they must provide written notice to the other party and the Superior Court Trial Office of the change in position, in addition to any notice required by the Rules of Court. If counsel have not indicated an application will be brought, the presumption is that it will not be heard. The failure to notify the other side and the Trial Office 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 any application may proceed.

BETWEEN:

HER MAJESTY THE QUEEN
- and -

☐ Crown Report, prepared by: _____

☐ Defence Report, prepared by: _____

Have counsel discussed the issues raised in this form? ☐ Yes ☐ No

ASSESSMENT PHASE

1. Chronology

- a) Date(s) of Offence(s): _____
- b) Date of Arrest: _____
- c) Date of Conviction: _____

2. Form of Judicial Interim Release

- a) Is the offender detained in custody on this/these charges? ☐ Yes ☐ No
- b) Is the offender detained in custody on any other charges? ☐ Yes ☐ No

3. Offences upon which the offender has been convicted or will be pleading guilty to:

4. Trial Judge: _____

Do counsel anticipate any problem arising if the Court were to assign a judge other than the trial judge to hear the Dangerous or Long-Term Offender Application?

Crown: ☐ Yes ☐ No Defence: ☐ Yes ☐ No

If yes, please specify: _____

5. Upon which section(s) does the Crown rely in seeking a Part XXIV order?

☐ s. 753(1)(a)(i) ☐ s. 753(1)(a)(ii) ☐ s. 753(1)(a)(iii) ☐ s. 753(1)(b)
☐ s. 753.1(1)(a) ☐ s. 753.1(1)(b) ☐ s. 753.1(1)(c)

6. Section 752.1 Assessment

a) Does the **offender** consent to the order? ☐ Yes ☐ No

b) If order opposed, the basis on which it is opposed is: _____

c) Does either party intend to call evidence on the application? ☐ Yes ☐ No

d) If yes, outline the witnesses, the anticipated evidence and provide time estimates for evidence and argument:

e) Have counsel discussed the material to be provided to the doctor preparing the assessment? ☐ Yes ☐ No

i) If there are issues please set out the contentious material: _____

7. Time Estimates

Crown estimate for evidence and argument: _____

Defence estimate for evidence and argument: _____

APPLICATION PHASE

8. Attorney General's Consent

a) Has the Crown received the Attorney General's consent? ☐ Yes ☐ No

b) If no, when is the response expected? _____

c) Is the consent to proceed with a:

i) ☐ Dangerous Offender application

ii) ☐ Long Term Offender application

9. Evidentiary Basis upon which the application will be based

a) Current conviction(s): synopsis to be attached to Crown form

- i) If the trial was before a judge and jury, will either party request a hearing pursuant to s. 724 regarding the factual conclusions?

Crown: ☐ Yes ☐ No Defence: ☐ Yes ☐ No

If yes, time estimates for submissions:

Crown: _____

Defence: _____

b) Prior convictions: ☐ Yes ☐ No

- i) If yes, list offence(s), date(s), whether trial or guilty plea, sentence(s) and attach a synopsis or brief summary of the offence(s):

- ii) Does the defence contest the admissibility of the evidence? ☐ Yes ☐ No

- iii) If yes, on what basis does the defence dispute admissibility? _____

- iv) How will the Crown seek to introduce the evidence of the prior conviction(s)?

☐ Transcripts ☐ Oral testimony ☐ Court records

Otherwise, please specify: _____

- v) If the evidence is admissible, does the defence dispute the method by which the Crown seeks to introduce the evidence?

☐ Yes ☐ No

Comments: _____

c) Prior uncharged offences or other conduct: ☐ Yes ☐ No

- i) If yes, list incident(s), date(s), and attach a synopsis or brief summary of the incident(s):

- ii) Does the defence contest the admissibility of the evidence? ☐ Yes ☐ No

- iii) If yes, on what basis does the defence dispute admissibility? _____

- iv) How will the Crown seek to introduce the evidence of the prior uncharged offences or other conduct?

☐ Transcripts ☐ Oral testimony ☐ Court records

Otherwise, please specify: _____

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- v) If the evidence is admissible, does the defence dispute the method by which the Crown seeks to introduce the evidence?

☐ Yes ☐ No

Comments: _____

- d) Other: ☐ Yes ☐ No

- i) If yes, attach a synopsis or brief summary of the evidence: _____

- ii) Does the defence contest the admissibility of the evidence? ☐ Yes ☐ No

- iii) If yes, on what basis does the defence dispute admissibility? _____

- iv) How will the Crown seek to introduce the evidence?

☐ Transcripts ☐ Oral testimony ☐ Court records

Otherwise, please specify: _____

- v) If the evidence is admissible, does the defence dispute the method by which the Crown seeks to introduce the evidence?

☐ Yes ☐ No

Comments: _____

e) Crown Expert Witnesses

- i) Does the Crown intend to call expert witnesses? ☐ Yes ☐ No

- ii) Does the defence contest the admissibility of the expert evidence **as disclosed**? ☐ Yes ☐ No

- iii) Name(s) of expert witnesses: _____

- iv) Field(s) of expertise: _____

- v) Issues upon which the evidence will be introduced: _____

- vi) Basis upon which admissibility of evidence contested:

☐ legal relevance ☐ **presence** of an exclusionary rule
☐ logical relevance ☐ expert's qualifications
☐ necessity in assisting trier of fact

vii) Comments: _____

viii) Time estimate for *voir dire*:

Evidence

Crown _____

Defence _____

Argument

Crown _____

Defence _____

10. Disclosure: Complete? ☐ Yes ☐ No

a) Outstanding issues: _____

b) Lost/destroyed: _____

c) Withheld/delayed: _____

d) How are the outstanding issues to be addressed and by what date? _____

11. a) Third Party Records Applications: ☐ Yes ☐ No

i) Relying upon: *Mills*, s. 278.2 ☐ Yes ☐ No

O'Connor ☐ Yes ☐ No

ii) Nature of Records: _____

iii) Time estimate for *voir dire*:

Evidence

Crown _____

Defence _____

Argument

Crown _____

Defence _____

iv) How long prior to trial does the applicant propose the motion be heard? _____

b) Institutional Records

i) Does the Crown intend to introduce institutional records? ☐ Yes ☐ No

ii) If yes, list institutions from which records are to be produced: _____

iii) Issues upon which the records will be introduced: _____

iv) Does the defence contest the admissibility of the records? ☐ Yes ☐ No

v) If yes, on what basis does the defence dispute admissibility? _____

12. Charter Applications

a) Does the **offender** intend to bring any *Charter* application that has not been addressed above?

☐ Yes ☐ No

b) If yes, will the application be to:

i) Challenge legislation? ☐ Yes ☐ No

ii) If yes, please provide details of challenge, nature of evidence to be called, time estimates for evidence and arguments:

iii) Challenge to the admissibility of evidence, not noted above? ☐ Yes ☐ No

iv) If yes, please provide details of challenge, nature of evidence to be called, time estimates for evidence and arguments:

13. Other legal issues requiring rulings either counsel anticipates will arise: ☐ N/A

a) _____

b) Time estimate for *voir dire*:

Evidence	Argument
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Crown _____

Defence _____

14. Defence Expert Witnesses

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

b) Name of expert(s): _____

c) Qualifications of the proposed witness as an expert: _____

d) Description of the area of expertise of the proposed witness that is sufficient to permit the other parties to inform themselves about that area of expertise:

e) Does the Crown contest the admissibility of the expert evidence? ☐ Yes ☐ No

f) Basis upon which admissibility of evidence contested:

- ☐ legal relevance
- ☐ logical relevance
- ☐ necessity in assisting trier of fact
- ☐ presence of an exclusionary rule
- ☐ expert's qualifications

g) Comments: _____

h) Time estimate for *voir dire*:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

15. Competency of Witnesses

a) Does the Crown/defence intend to call any witness who is under the age of 14? ☐ Yes ☐ No

b) Does the Crown/defence intend to challenge the capacity of any witness on the basis of mental capacity?

☐ Yes ☐ No

c) Name of witness, and basis of challenge: _____

16. Manner in which evidence is to be introduced

a) Does the Crown or defence seek to have any witness's evidence introduced:

i) by video link, pursuant to s. 714.1 or s. 714.2? ☐ Yes ☐ No

ii) by reading in evidence previously taken pursuant to s. 715? ☐ Yes ☐ No

iii) by videotaped evidence, pursuant to s. 715.1? ☐ Yes ☐ No

iv) as vulnerable witness, pursuant to s. 486.2? ☐ Yes ☐ No

v) other means? Details: _____

b) Does the opposing party consent to the admissibility of the evidence in the manner proposed? ☐ Yes ☐ No

c) If opposed, estimated time for:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

17. Will the Crown or any witness apply for an order pursuant to s. 486.3, appointing counsel to cross-examine a witness if the offender is not represented by counsel?

☐ Yes ☐ No

Does the offender oppose the order? ☐ Yes ☐ No

18. Support Person

a) Will any Crown witness require a support person, pursuant to s. 486.1(1)? ☐ Yes ☐ No

Details: _____

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- b) Will any Crown witness require a support person, pursuant to s. 486.1(2)? ☐ Yes ☐ No

Details: _____

- c) Does the defence oppose the order? ☐ Yes ☐ No

19. Publication Bans/Deferred Publication Orders

- a) Does the Crown seek an order pursuant to s. 486.4 or 486.5, banning the publication of the complainant's identity?

☐ Yes ☐ No

- b) Does the defence oppose the order? ☐ Yes ☐ No

- c) If opposed, estimated time for:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

- d) Does either party seek other publication bans or deferred publication orders?

Crown: ☐ Yes ☐ No

Defence: ☐ Yes ☐ No

- e) If yes, provide details of order sought, media to be notified, timing of hearing, time estimate for hearing:

- f) Does the other party oppose the application? ☐ Yes ☐ No

- g) If opposed, estimated time for:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

20. Privilege issues

- a) Will the Crown be raising issues of privilege? ☐ Yes ☐ No

- b) Will the defence be raising issues of privilege? ☐ Yes ☐ No

- c) If yes, please specify the nature of evidence and issue of privilege: _____

- d) Basis upon which the party seeking admission relies: _____

- e) How does the party claiming privilege seek to introduce the evidence on the *voir dire*?

i) *Viva voce* evidence ☐ Yes ☐ No

ii) Agreed statement of facts ☐ Yes ☐ No

iii) Witness statements ☐ Yes ☐ No

iv) Transcripts ☐ Yes ☐ No

- f) Does the other party consent to the manner in which the evidence will be introduced on the *voir dire*?

☐ Yes ☐ No

g) Comments: _____

h) Time estimate for *voir dire*:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

21. Gladue considerations

- a) Is the **offender** of Aboriginal heritage? ☐ Yes ☐ No
- b) Does the Crown or defence anticipate calling any witnesses, **introducing any evidence**, or making any submission in relation to *Gladue* considerations?
- Crown: ☐ Yes ☐ No
- Defence: ☐ Yes ☐ No
- c) If yes, please indicate the witnesses to be called, the nature of their evidence, and provide time estimates for evidence and argument:

d) Does the other counsel consent to the admissibility of the evidence? ☐ Yes ☐ No

e) If no, please provide the basis of the objection: _____

22. Factual, evidentiary or legal admissions sought by the Crown, or conceded by defence:

	Does the defence agree?
1) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
2) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
3) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
4) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
5) _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

23. Position of Offender in Court

- a) Will there be an application to have the offender sit at counsel table? ☐ Yes ☐ No
- b) Does the Crown consent? ☐ Yes ☐ No
- c) If opposed, what is the nature of the evidence relied upon? _____

d) Time estimate for *voir dire*:

Evidence	Argument
Crown _____	Crown _____
Defence _____	Defence _____

24. Interpreters

- a) Does the **offender** require an interpreter? ☐ Yes ☐ No
- b) If yes, for which language(s)? _____
- c) Do any Crown witnesses require an interpreter? ☐ Yes ☐ No
- d) If yes, for which language(s)? _____
- e) Do any defence witnesses require an interpreter? ☐ Yes ☐ No
- f) If yes, for which language(s)? _____
- g) Should two interpreters be required? ☐ Yes ☐ No

25. Additional Courtroom Equipment required

- a) Elmo projector ☐ Yes ☐ No
- b) Television and VCR ☐ Yes ☐ No
- c) Television and CD player ☐ Yes ☐ No
- d) Television and DVD player ☐ Yes ☐ No
- e) Hearing devices ☐ Yes ☐ No
- f) Teleconference facilities ☐ Yes ☐ No
- g) Other: _____

26. Courtroom Security Issues

- a) Does any party believe that increased courtroom security issues are raised in this case? ☐ Yes ☐ No
- b) Does either party seek an order closing the courtroom to the public, pursuant to s. 486(1)? ☐ Yes ☐ No
- c) Details: _____

27. Crown's Position

- a) On a Dangerous Offender application, is the Crown seeking:
- i) an indeterminate sentence, pursuant to s. 753(4)(a)? ☐ Yes ☐ No
- ii) a determinate sentence followed by a long-term supervision order pursuant to s. 753(4)(b)? ☐ Yes ☐ No
- iii) a determinate sentence pursuant to s. 753(4)(c)? ☐ Yes ☐ No

Length: _____

- b) On a Long-Term Offender application, the Crown will seek:

- i) length of determinate sentence: _____
- ii) length of long-term supervision order: _____

28. Corollary Orders sought by the Crown

a) DNA Order: ☐ Yes ☐ No

b) s. 109 prohibition: ☐ Yes ☐ No

Duration: _____

c) s. 161 order: ☐ Yes ☐ No

Duration: _____

d) Sex Offender Registry Order: ☐ Yes ☐ No

☐ 10 years (s. 490.013(2)(a) – maximum sentence: 2 – 5 years)

☐ 20 years (s. 490.013(2)(b) – maximum sentence: 10 – 14 years)

☐ life (s. 490.013(2)(c) or (3) – maximum sentence of life or if was bound by previous *SOIRA* order)

29. Time estimates

Crown estimate for evidence and argument: _____

Defence estimate for evidence and argument: _____

30. Counsel's Availability (including expert witnesses)

Crown: _____

Defence: _____

Date: _____

Case Supervision Judge: _____

Counsel for Crown: _____

Counsel for Defence: _____

Was the Case Management Conference completed on today's date? ☐ Yes ☐ No

If no, date and time at which the Case Management Conference will be completed/continued: _____

Steps Crown to take prior to continuation of Case Management Conference: _____

Steps Defence to take prior to continuation of Case Management Conference: _____