

# Provincial Court Scheduling Project

## Frequently Asked Questions

### Changes for Defence Counsel (February 2014)

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## Frequently Asked Questions

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1. *Why has the Court embarked upon the Scheduling Project?*

The existing scheduling model is based on processes designed with the anticipation that trials will actually proceed as scheduled. However, statistics show that only about 32% of criminal trials proceed as scheduled on the trial date. This rate of collapse is not unique to BC; most jurisdictions in Canada and the U.S. report roughly the same trial collapse rate. This collapse rate has been identified as a fundamental cause of court backlogs in BC, across Canada and in the U.S. Our existing scheduling model also focuses on the trial event, despite the fact that less than 5% of all cases filed result in a trial. The Court has examined scheduling changes made in other jurisdictions in Canada, such as Alberta, Manitoba, Newfoundland and Labrador. Those changes were based on the introduction of a model that *accepts* a high trial collapse rate but incorporates features—mainly the use of an assignment court, coupled with the movement of “front-end” administrative activities out of the courtroom—which ensure that despite the collapse rate, most cases that are ready to be tried actually get to trial when they are called. Those other jurisdictions report that the scheduling changes have resulted in improvements in timely access to the court.

The Court recognized that there is a need to implement a similar scheduling model in BC.

*2. What are seen as the main problems with the current scheduling model?*

The case management system based on the Criminal Caseflow Management Rules (CCFM) has been in place since 1999. Criminal Process Reforms (CPR) were introduced in some locations starting in 2007. Together, these rules were designed with the hope that if the courts could encourage and influence early file resolution, or at least manage those files, a beneficial effect on trial certainty would be the result. Statistics suggest that this approach has not worked and thus the Rules were changed as of December 1, 2013.

Over the years, we have learned certain things about Court Scheduling, including:

- a) A great deal of the Court's resources are consumed with scheduling and then conducting administrative procedures aimed at ensuring that a scheduled event takes place;
- b) No system can overcome scheduling issues such as parties and/or witnesses not appearing as scheduled or parties and/or witnesses changing their positions on the day scheduled for trial;
- c) The assigning in advance of judges to particular matters on particular dates greatly diminishes scheduling flexibility when inevitable collapses occur;
- d) Despite efforts by the Court to oversee the movement of cases through the criminal process, the number of appearances on criminal cases increased; and
- e) Much of the Court's scheduling work has been done through in-person appearances, wasting not only the Court's time but also that of the accused, defence and crown counsel.

These difficulties are a matter of common experience in court systems. Many other jurisdictions in Canada and the United States have attempted to create trial certainty by front-end judicial management and they have experienced the same challenges and frustrations as those listed above. More recently, some jurisdictions in Canada have moved away from front-end judicial management to a more flexible scheduling model which accepts, in principle, the fact that trial certainty is unattainable and works around the inevitable uncertainty, instead of attempting to eliminate it.

The Court recognizes that it is necessary to take the initiative to examine its own processes and introduce innovations aimed at improving its ability to serve the public. One way that the Court now deals with the expectations of improved efficiency reflected in the Cowper Report and White Paper, is by diverting some quasi-administrative functions to JCMs and other judicial officers, thereby freeing up judges to spend more time performing the adjudicative functions that only they can perform. Those "front-end" changes—coupled with a mechanism for feeding new matters to judges quickly when, inevitably, matters collapse on the day of trial—should shorten the overall time that it takes matters to get to trial, reduce backlogs and give judges more judging and less administrative work to do.

### *3. What are the goals of the scheduling project and how will these goals be evaluated?*

The primary goal of any scheduling system for the Court is to ensure that it attracts the confidence of the public by fairly and promptly adjudicating matters before the Court.

Historically, the Court has strived to achieve an appropriate level of access by taking steps to ensure that an event takes place as scheduled. For many reasons, this approach has not generally been successful. There are too many variables outside the control of the Court which determine whether or not an event takes place. Experience demonstrates that scheduling to certainty creates an inflexible system. If a scheduled event does not take place, the Court cannot easily reassign the committed judicial resource.

The goal of the new scheduling model is to increase flexibility when applying judicial resources while ensuring that the use of those resources is effective, efficient and equitable. Abandoning the practice of committing judicial resources to cases without knowing if the matter is going to proceed is one of the keys to increasing flexibility in the scheduling system and is the essence of the delayed assignment of cases and judges model of court scheduling.

The Court recognizes that in order to ensure that this goal is met, it is vital to objectively evaluate the new scheduling model following its implementation. While Assignment Courts are in use in other provinces, due to the lack of information technology those provinces have been unable to objectively evaluate the effectiveness of their Assignment Courts other than in a small-scale and manual fashion. Fortunately, our Court already has more institutional resources in place to provide the statistical information necessary for such an evaluation. It is anticipated that the scheduling software being developed for the Court will add significantly to the information that can be obtained and analyzed for the purpose of evaluating the new scheduling model.

### *4. What are the key features of the proposed scheduling model?*

There are three main components to the new model:

- **Front-end Simplification of Criminal Process (Implemented December 2013)**

Changes have been made to the Criminal Caseflow Management Rules by simplifying the front-end criminal process, reducing the number of in-court appearances and returning to counsel the primary responsibility for early case conduct. Most procedural and administrative steps are now being performed by JCMs, leaving judges free to mainly perform adjudicative functions. The Court expects that by returning to counsel the responsibility for the movement of criminal cases through the front-end process, counsel should be able to reduce the number of appearances on their files.

- **Delayed Assignment of Judges to Scheduled Cases**

The new model will see the assignment of cases to a courthouse (when first set for trial), rather than to a specific judge and courtroom. If the trial is confirmed as proceeding on the day set for hearing, the matter will then be assigned to an available “feeder” trial court (in Assignment Court locations). Rigid advanced booking of resources is being replaced by flexibility so as to reduce the loss of sitting time arising from the inevitable collapse of cases, adjournments and last-minute guilty pleas.

- **Enhanced Use of Technology**

Sometimes referred to as “have a judge, need a judge,” the Court will continue to use video technology to link up available judicial resources with emergent needs to enhance access to justice.

Thus:

- a) A party will only rarely appear before a judge, unless a substantive issue, trial or disposition is contemplated.
- b) Parties represented by counsel are able to attend administrative appearances electronically.
- c) Judges are not assigned specific trials in advance; rather, they will be scheduled, where applicable, through the assignment court to a particular file at the time when the parties declare that they are ready to proceed with a trial or a disposition. In smaller courthouses, the delayed assignment of judges to scheduled cases is part of the new scheduling model;
- d) Judges presiding in disposition courts are identified, weeks in advance. The specific assignments of the trial judges will not be made public.
- e) There will be different streams for case scheduling, based on the notion of proportionate process. There will be a separate stream for lower complexity trials where the time estimate for trial is for less than half a day. In some locations this will include the creation of a Summary Proceedings Court.
- f) Judicial case management in cases requiring it will be instituted upon application of counsel and/or parties or upon the Court’s own motion.

5. *The Simplified Front End Process mentions returning the primary responsibility for the movement of criminal cases to counsel and it also indicates that counsel will be able to reduce the number of appearances on files. Do you have any tools to assist counsel with this change?*

The [December 2013 Practice Direction](#) outlines changes to the CCFM Rules and introduces three new forms: [Consent Requisition](#), [Consent Remand](#) and [Consent Arraignment](#). These forms are available as an alternate form of appearance for counsel. To support Crown and Defence counsel as they engage in effective communications, these optional and convenient forms can be used to reduce unnecessary court appearances by submitting the forms to cancel or schedule court dates as needed.

The Consent Requisition, Consent Remand and Consent Arraignment forms are available on the Court Services website: <http://www.ag.gov.bc.ca/courts/criminal/info/forms.htm> and can be submitted electronically to the JCM.

The project team has prepared several documents with information on how and when to use the forms. The [Provincial Court Scheduling Project Notes for Forms and Workflows](http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/practice-directions) is available on the Provincial Court website: <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/practice-directions>. A "Forms - Frequently Asked Questions" document for counsel is now available on the PCSP Sharepoint site. Visit the PCSP Sharepoint site at <https://extranet.provincialcourt.bc.ca/> (Domain\username: PROVJUD\pcspinfo; Password: **WelcomePCSP13**).

#### *6. What the court scheduling project is not.*

This scheduling project is not intended to address all of the challenges facing the Court and litigants at this time. However, improvements in the way the Court manages scheduling will help to address trial delays associated with cases not proceeding ("collapsing") as scheduled, lack of preparedness on the part of counsel/litigants, adjournments due to lack of court time, and difficulty in setting continuation dates.

Although there are linkages, the Crown File Ownership Project in the Criminal Justice Branch is a separate initiative from the Provincial Court Scheduling Project. As part of that initiative, BC Crown counsel (in Assignment Court locations) are moving to an office structure that will see prosecutors "own" trial cases in a manner that more closely resembles the private practice of law. Trials, other than those having little or no complexity, will be assigned to a single Crown prosecutor who will be expected to work the file until it is closed. Defence counsel will have a contact person with whom to speak on a prosecution case. The success of the Assignment Court is not dependent on the Criminal Justice Branch moving to a model of file ownership, but it will benefit considerably from such a change in how cases are managed.

Lastly, although the project will introduce new computer software for scheduling and Rota, the movement to electronic filing and an electronic court file are not part of this initiative.

#### *7. Is this new scheduling model being introduced as a pilot project?*

The Provincial Court Scheduling Project is not a pilot project. The simplified front-end criminal process was implemented across the province in December 2013. The Assignment Court is expected to be first implemented in the North Fraser area in July 2014 and will be supported by technical and administrative personnel from the Court. Port Coquitlam has been chosen as the first site for implementation for a number of reasons including:

- The Court conducts work in all divisions (family, criminal and civil);
- It is a mid-sized location, where a modest use of judicial resources can be applied to partially reduce case backlog prior to the implementation of the new scheduling system;
- There are no Supreme Court sittings in Port Coquitlam to be considered relative to changes to courtroom booking patterns; and

- Counsel in the area have expressed an appetite for changes to scheduling.

Once Assignment Court has been introduced and is operating smoothly in North Fraser, it will be implemented location by location in the following courthouses: Robson Square, Vancouver (222), Victoria, Kelowna, Abbotsford and Surrey.

*8. I've heard the term "blind rota" being used. What is it and why are these scheduling changes being made?*

The term "blind rota" refers to an unpublished rota where the identity of the Judge expected to hear the trial is not disclosed. As outlined in the December 18, 2013 Notice to the Profession

As of January 1, 2014, the Court will begin the practice of delaying the assignment of judges to cases and courtrooms. This will mean that it will no longer be known in most instances which judge will be designated to hear a trial prior to the court date and, therefore, no longer possible to inform counsel in advance who the trial judge is likely to be. Cases that require judicial pre-trial case management, or have pre-trial applications which must be conducted by the trial judge, will be assigned as required by the Regional Administrative Judge or their designate. The Court will no longer be publishing a judicial rota indicating which trial matter(s) or courtroom a judge is scheduled to. Disposition and other list courts along with case conference assignments will be identified in advance, albeit at a later point in time than now occurs.

These changes were adopted by the Court after extensive engagement with the legal profession and are intended to increase judicial resource scheduling flexibility and improve access to justice.

*9. Who will preside in Assignment Court and what is expected to happen in Assignment Court?*

JCMs will preside in Assignment Court. Management of the Assignment Court list is consistent with the current role of many JCMs. The JCMs are also well-suited to assign cases, given their overall sense of available resources and information they have about cases from counsel. A JCM may consult with a judge on a matter where direction is required, or stand a matter down to allow a judge to hear an application to adjourn. In order to conduct the triage of the trial list in a timely way, this work will begin a half hour ahead of the regular court sitting (i.e. at 9:00 a.m.).

A JCM will conduct the assignment court list by canvassing the matters for readiness to proceed. Only matters where participants are present and have indicated they are ready to proceed as scheduled will be moved to an available feeder court. It is at this time that a judge will be scheduled to the case. Adopting this method of trial (case) distribution ensures that only judges and court staff that are actually required will be used and that judicial resources are dedicated to meaningful events that are ready to proceed, thus reducing the loss of sitting time that occurs from the unavoidable nature of trial collapse.

### *10. How will the proposed model affect continuations?*

Under the new trial scheduling model, judges will not be “assigned” to a case until it is canvassed on the hearing date and evidence is ready to be called. The added flexibility gained by delayed assignments should make it possible, in most cases, for the trial judge to carry on hearing a case to conclusion, as that judge will not otherwise be scheduled to hear another case or to be in another courtroom the following day. Other provinces that have moved to a delayed assignment model have experienced a significant decrease in the number of continuations. Counsel will benefit from providing accurate trial time estimates in a delayed assignment model in avoiding creating problems for their own calendars. Where a case cannot continue the following day, it should be easier and faster to find a continuation date given that judges will not generally be pre-assigned to other court work.

### *11. How will the new model operate (or look different) in smaller court locations?*

Although the new court scheduling model makes adjustments, for remote circuit and satellite court locations, the intention is to bring all locations in line with the new model to the greatest extent possible.

The simplified front-end criminal process now applies in all court locations in the province. Administrative, non-adjudicative functions (on criminal cases) that were performed by judges are now being dealt with by JCMs in most courthouses.

In courthouses where there is only one judge sitting on any given court day, the delayed assignment of judges to scheduled cases is not expected to be any different than how the list is developed and heard now.

### *12. What is the communication plan to communicate changes to the bar and other user groups?*

Communication to the bar has been in progress since late 2012. A distribution list has been set up for the bar and members who would like to be added to this list can contact the project team at [PCSS@provincialcourt.bc.ca](mailto:PCSS@provincialcourt.bc.ca). We have communications in progress with other stakeholder groups as well.

In addition to the contact email address, the PCSP project team has set up a Sharepoint site that is updated as information becomes available. To access this information, please visit the PCSP Sharepoint site at <https://extranet.provincialcourt.bc.ca/> (Domain\username: **PROVJUD\pcspinfo**; Password: **WelcomePCSP13**).

Your feedback and ideas are important and welcomed by the project team. While we may not be able to accommodate all requests, we will try to incorporate your ideas without compromising the underlying goals and objectives of the scheduling reforms.