



SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

PRACTICE DIRECTIVE P.D. (Crim.) No. 2019-01

RULES AFFECTED: *Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador*, rule 14.

EFFECTIVE DATE: June 7, 2019

The following Practice Directive is issued pursuant to rule 1.04 of the *Criminal Proceedings Rules of the Supreme Court of Newfoundland and Labrador*.

DETENTION REVIEW HEARINGS PURSUANT TO S.525 OF THE *CRIMINAL CODE*

Background and Purpose

1. Section 525 of the *Criminal Code* provides for an automatic review of a person's pre-trial detention at set points in time after being taken into custody. The purpose of such reviews is to consider whether the continued detention of the accused is justified and, where necessary, to expedite the individual's trial.
2. The approach to be taken on such detention reviews was recently clarified by the Supreme Court of Canada in its decision in *R. v. Myers*, 2019 SCC 18. In light of this, the Court considers it advisable to issue the Practice Directive below, detailing the procedure to follow in this Court on applications for detention reviews pursuant to s. 525 of the *Criminal Code*.

Practice Directive

(a) Setting a Date for the Detention Review Hearing

3. The Correctional Centre having custody of an accused is responsible for sending an application to the Court for the accused's detention review within the applicable time limit set out in s. 525(1). For ease of reference, that subsection states:

525. (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in

custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced

(a) in the case of an indictable offence, within ninety days from

(i) the day on which the accused was taken before a justice under section 503, or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, or

(b) in the case of an offence for which the accused is being prosecuted in proceedings by way of summary conviction, within thirty days from

(i) the day on which the accused was taken before a justice under subsection 503(1), or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision,

the person having the custody of the accused **shall, forthwith on the expiration of those ninety or thirty days**, as the case may be, apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody.

4. Upon receipt of the application from the Correctional Centre, a registry clerk will set the matter down for the earliest available return date and notify Crown Counsel, Defence Counsel (if known), and the Correctional Centre of the date assigned.

(b) Waiver of hearing

5. Where the accused person is represented by Defence Counsel, the Court may, prior to the return date, contact Defence Counsel to inquire whether the accused wishes to waive his or her detention review hearing. If Defence Counsel confirms in writing that the accused, after having received legal advice, wishes to waive the hearing, the Court will remove the matter from the docket.

6. Where the accused person is unrepresented, the accused must appear on the return date. The appearance, for this purpose, will be by videoconference.

(c) Procedure on the Return Date

7. On the return date, the presiding judge will inquire whether the accused wishes to waive the detention review hearing. If the accused does not wish to waive the hearing, the presiding judge will enlarge the hearing and set a new date. In doing so, the judge must ensure that the adjournment does not undermine the purpose of s.525, as required pursuant to rule 14.03(1)(a).
8. On the return date, the presiding judge will also inquire whether a transcript or other documents will be necessary to conduct the review and may provide directions with regard to filing of materials required, pursuant to rule 14.03(2). The judge may also inquire whether the accused person wishes to appear at the hearing in person or by videoconference in accordance with s. 515(2.2).

(d) Procedure at the Hearing

9. Unless the judge directs otherwise, any material to be relied upon at the hearing (e.g. transcripts, exhibits, etc.) must be filed with the court at least two clear days prior to the date fixed for the hearing as directed by rule 14.07. Note that no briefs are required for an application under s. 525 (see rule 14.06).
10. On the enlarged hearing date, Crown Counsel and Defence Counsel (if there is one) must be present. Where the accused is self-represented, the accused must also be present. The accused may, in accordance with s. 515(2.2), request to appear by videoconference.
11. At the hearing, the reviewing judge may make inquiries about the case, and may refer to the transcript, exhibits, and reasons from any initial judicial interim release hearing and from any subsequent review hearings.
12. Where appropriate, a reviewing judge may exercise their discretion to give directions for expediting the trial and related proceedings pursuant to s. 525(9) of the *Criminal Code*.

Authorized by:

Raymond P. Whalen
CHIEF JUSTICE OF THE SUPREME COURT

Ethel Chaulk
REGISTRAR