

PROVINCIAL COURT OF BRITISH COLUMBIA
CRIMINAL CASE FLOW MANAGEMENT RULES

A GUIDE FOR SPECIALIZED VICTIM ASSISTANCE
PROGRAMS AND OTHER ANTI-VIOLENCE
ADVOCATES

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A GUIDE

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INTRODUCTION

On October 4, 1999 the British Columbia government introduced new court rules to govern the flow of criminal cases in Provincial Courts. The new rules are called the Criminal Caseflow Management Rules. The Rules were introduced in a staggered manner across the judicial districts in the province beginning with the Okanagan Judicial District on October 4, 1999 and concluding in the Vancouver and South Fraser Judicial Districts on November 6, 2000. The Rules apply in Adult and Youth Court, from an accused's first appearance in Court up to the disposition of an accused's case.

This guide is meant to provide:

- an explanation of the process created by the Rules and
- recommendations from the BCASVACP

The Guide is intended to be used by specialized victim assistance programs and other anti-violence advocates who deal with cases of violence against women, children and others in the criminal justice system. It is divided into the following sections:

- Background
- Overview
- Quick Reference
- Explanation of the Rules
- Recommendations
- Appendices

The Quick Reference is meant to provide a short statement of the content of each rule; if further explanation is required the reader can refer to the specific rule in the Explanation of the Rules section.

The Explanation of the Rules section offers a description of the content of each rule. The format of this section follows the format of the Rules themselves; that is, the same titles, headings and subsections found in the Rules are used in the Explanation of the Rules section in this Guide. In addition, under selected rules there will be a section called 'Note to Advocates' which will contain commentary and analysis, as appropriate.

Throughout the guide, the term "survivor" is used to depict women abused in relationships, women who have been sexually assaulted and persons who have been sexually abused in childhood.

BACKGROUND

The Rules arose as a result of significant problems with delay and backlog in the criminal justice system. A Task Group of Judges, lawyers, the Legal Services Society, the Law Society, Court Services Branch and Criminal Justice Branch initially proposed the new process and rules in a Report adopted by Chief Judge R.W. Metzger in April 1998. The Task Group identified three areas of concern with the criminal case processes. First, there were too many administrative court appearances, second, there were interruptions and delays in trial days and third, trial days were severely overbooked.

As a result of the problems with the progress of criminal cases there was a significant waste of counsel and witnesses time, limited court time was ineffectively used and witnesses were subpoenaed needlessly. In addition, there was little incentive for the early resolution of cases. These problems compromised public confidence in the judicial system.

The backlog of cases and the overload to the criminal justice system have a significant adverse effect on cases of violence against women and children. Delays and uncertainty in the system result in increased emotional stress for the survivor and her family and expose them to further risk of harm. They also result in a number of cases being stayed due to the lengthy delays in the court system. To the extent the Rules will ensure that the criminal process will move cases in the system along more quickly and efficiently, the Rules are a welcome change.

The comments of two Judges are referred to in this Guide. The Honorable Chief Judge Carol Baird Ellan's comments are from an interview she gave to the CBC Radio; the comments of The Honorable Associate Chief Judge Stansfield are from a personal interview.

The Chief Judge of the B.C. Provincial Court stated the Rules were brought into effect to create 'trial certainty'; she said there was a 70% collapse rate for cases going to trial, each trial date was overbooked by 3 or 4 times and people were waiting 18 months to go to trial. The Chief Judge stated that inner scrutiny of the process was needed to raise efficiency. The Rules, she said, require earlier scrutiny by the Court. They also require earlier attendances by some people.

According to The Honorable Judge Stansfield, 93% of cases are resolved without a trial, most commonly by guilty plea or Crown stay the proceedings. The Rules are an effort to recognize that the vast majority of cases that do not require a trial and to manage the flow of those cases with a view to resolving them at earlier stages in the process.

The Criminal Caseflow Management Rules are intended to coordinate court processes and resources so that cases can move through the court system more quickly and more efficiently. This is to be achieved by early court intervention in the identification of issues, the supervision of the flow of cases, by enforcing timelines, by the review of cases to determine if alternative resolution procedures are appropriate and to ensure that reasonable dates are set for trials and other court appearances.

According to the Provincial Court of British Columbia paper entitled "Introduction to Process and Rules", the Rules are meant to be 'open, efficient, understandable and accessible'. The goals of the Rules are to:

- reduce the number of appearances per case
- create greater 'event certainty'
- achieve speedier case disposition
- improve the accuracy of trial scheduling
- avoid witnesses being subpoenaed unnecessarily

OVERVIEW

The Rules identify four significant stages in a criminal case. They are the:

1. Initial Appearance,
2. Arraignment Hearing,
3. Trial Confirmation Hearing and
4. Trial.

Specific time lines are set in the Rules for each of four stages in the new criminal caseflow management system. Ideally, the progress of each case will be monitored, at each stage, to identify whether the issues in the case can be narrowed, whether there are possibilities for resolution of issues or the case itself and whether the case is ready to proceed to the next stage in the process. This monitoring is intended to reduce overbooking of court time and to enable more accurate scheduling.

Prior to the Rules many preliminary matters were dealt with in front of a Provincial Court Judge in open court. The Rules now empower Justices of the Peace, sometimes called Justices or JPs, to handle many of these preliminary matters in a criminal case. Justices of the Peace are not required to be lawyers and have only the limited powers granted to them under the Rules.

QUICK REFERENCE

There are 13 rules contained in the Criminal Caseflow Management Rules; they set out the process by which criminal cases will be handled in British Columbia Courts. Each rule may have many subsections. A brief summary of the content of each rule is set out below for quick and easy reference.

Rule 1 sets out the purpose of the Rules, the definition of the terms used in the Rules and how the Court will handle matters that are not provided for in the Rules.

Rule 2 grants a Judge flexibility in the application of the Rules; it gives a Judge discretion to dispense with or modify the application of a rule or rules.

Rule 3 gives the Chief Judge authority to issue directives, called ‘practice directions’, about how the Rules are to be interpreted or applied.

Rule 4 provides that the requirements in the Rules to notify the Court or lawyers will be met if the notice is faxed to the Court or lawyer. It also states that records that are required to be filed must be filed in the Court registry where the prosecution was started unless the matter has been transferred to another Court, in which case, the record must be filed with that Court registry as well.

Rule 5 sets out the purpose of an Initial Appearance and the requirement that an Arraignment Report be filed at the Initial Appearance, (although a practice direction has modified this requirement). If an accused intends to plead guilty, the rule permits the Justice of the Peace to refer a case to a Judge either immediately or at a later date. The rule establishes a Judge’s authority to make any orders necessary to achieve the purpose of the Rules. The rule also provides for Arraignment Hearings to be expedited.

Rule 6 requires a Prosecutor to provide an accused or his lawyer with disclosure at the Initial Appearance or as soon after as possible. It also provides that either the prosecutor or the accused or his lawyer may apply to the Court for directions about disclosure issues.

Rule 7 establishes a requirement that the prosecutor and the accused’s lawyer file Arraignment Reports.

Rule 8 sets out who is required to attend at the Arraignment Hearing, (although a Practice Direction has modified this provision). The rule sets out the powers of a Judge at an Arraignment Hearing. The rule requires that trials be set for the periods of time estimated by a Judge and that a Trial Confirmation hearing be set at least 30 days before the Trial.

Rule 9 requires the prosecutor and accused’s lawyer to file a Trial Readiness Report at the Trial Confirmation Hearing. The rule permits an accused’s lawyer not to attend the Trial Confirmation Hearing if his Trial Readiness Report is filed.

Rule 10 requires the prosecutor and the accused to attend the Trial Confirmation Hearing. The rule authorizes a Judge to review the Trial Readiness Report and if necessary, either adjourn the Trial Confirmation Hearing or make an order to achieve the purposes of the Rules.

Rule 11 sets out the process by which an application to adjourn a Trial or Preliminary Inquiry which has already been set, but has not begun, may be made.

Rule 12 obliges accused’s lawyers to advise the Court of a change of legal counsel and obliges prosecutors and accused’s lawyers to advise the Court if the time estimates given are incorrect.

Rule 13 permits a Judge to order a continuation of the proceeding, within a 30-day period or less, if it does not conclude within the time provided.

Form 1 is the Arraignment Report that must be filed by the prosecutor.

Form 2 is the Arraignment Report that must be filed by the accused’s lawyer.

Form 3 is the Trial Readiness Report that must be filed by the prosecutor.

Form 4 is the Trial Readiness Report that must be filed by the accused's lawyer.

Form 5 is the Notice of Application to Adjourn that must be filed by the lawyer seeking the adjournment.

EXPLANATION OF THE RULES

RULE 1 – OBJECT, APPLICATION AND INTERPRETATION

(1) Purpose of Rules

The purpose of the Rules is: “to provide simple, effective, and efficient management of all proceedings of a criminal nature in order to secure a just and timely determination of every case before the court.”

Note to Advocates

This rule is important to know as it sets the tenor of the Rules and it is the measuring stick against which a Judge’s orders or directions will be compared. The Rules provide occasions where Judges are granted discretion to make orders or issue directions to deal with situations that may arise; however, their discretion is required to be exercised in a manner that promotes the purposes of these Rules.

One of the purposes of the Rules is to secure a “just determination” of every case; a “just determination” should factor in the impact of the decision on women and children survivors of violence. Ultimately, it is up to the prosecutors to provide these facts to Judges and for Judges to seek this information through victim impact statements.

(2) Definitions

This subsection defines certain words in the Rules. It is a common subsection found in most rules and legislative enactments. However, not every word in the Rules will be defined.

(3) Matters not Provided for in Rules

This sub rule recognizes that not all eventualities will be covered by the Rules and therefore, provides a general statement that where such eventualities occur and require direction, that direction is to be determined by reference to the purpose of the Rules and any Practice Directions issued under rule 3.

Note to Advocates

This reinforces the primacy of the purpose of the Rules. It also recognizes the authority of the Court to issue what are called ‘Practice Directions’; these are notices issued to the legal profession, which establish modifications to rules or to procedures.

RULE 2 – EFFECT OF NON-COMPLIANCE

Essentially this rule gives Judges considerable latitude to apply, disregard or vary the Rules as needed in a particular case.

(1) Non-compliance

This sub rule simply ensures that even though a rule has not been followed, the failure to follow the rule will not undermine or void any part of the process or results of a case.

Note to Advocates

This is essential because although the Rules are important, permitting a failure to follow the Rules to undermine the substantive events in a case makes the process and results of a case very vulnerable. For example, without this sub rule, deliberate disregard for the Rules or carelessness or honest mistakes all could negate guilty pleas, Orders of the Court or sentences.

(2) Court may grant relief

In this sub rule a Judge is authorized to correct any failures to comply with the Rules in order to ensure the purpose of the Rules is achieved.

(3) Judge may dispense with compliance

This sub rule grants a Judge the authority to disregard or vary a rule if it is in the interests of justice. For example, if the prosecutor did not fully complete a required report, the Court could either waive the requirement or grant him or her additional time to do so and ensure the accused is not prejudiced by this extension.

Note to Advocates

This sub rule is useful in that it permits counsel to ask the Court for flexibility in the application of the Rules; there may be occasion where cases of violence against women and children may need accommodation. For example, the Rules provide that an accused who pleads guilty may be sentenced immediately (rule 5(5)(a)). However, the prosecutor may request an adjournment in the sentencing of an accused in order to permit the survivor to prepare a victim impact statement; rule 5(5)(b) permits the prosecutor to ask that the sentencing take place on another date if it is in the interests of justice.

RULE 3 – PRACTICE DIRECTIONS OF CHIEF JUDGE

(1) Practice directions

This rule provides that the Chief Judge may issue Practice Directions, which are consistent with the Rules and their purposes. The primacy of the purpose of the Rules is reinforced by this rule.

Note to Advocates

Two Practice Directions have been issued that change the provision of these Rules; they affect rule 5(4) and rule 8. The content of those Practice Directions is discussed under the relevant rule in this Guide.

RULE 4 – NOTICE AND FILING

(1) Notice by Fax

This sub rule permits any notices that are required to be given to be sent by fax.

Note to Advocates

This is a concession to the modern age, under older systems lawyers were required to serve notices via a process server and be able to prove service of notices with Affidavit's of Service; it was a cumbersome process.

(2) Where to File Records

According to this sub rule, where records are required to be filed in Court, they must be filed in the Court registry where the prosecution was started.

(3) Idem

If the venue of a Trial is changed to another Court, any records required to be filed must be filed in the new Court.

RULE 5 – INITIAL APPEARANCE

(1) Purpose of the Initial Appearance

This sub rule states that the purpose of the Initial Appearance is to set a ‘timely date’ for the accused’s Arraignment Hearing.

Note to Advocates

An Initial Appearance is defined in the definition section of the Rules (Rule 1(2)) and means “the required attendance of a person in court for the first time in respect of a charge, and includes an adjournment from such appearance.” This means that an accused may attend in Court more than once for an ‘Initial Appearance’ if the previous ‘Initial Appearance’ was adjourned.

At the Initial Appearance there is contact between the prosecutor and the accused. As a result of the Rules, the prosecutor provides earlier disclosure of information to the accused.

(2) If Accused not represented by Legal Counsel

This sub rule permits a Justice to ask the accused if he wants to consult with a lawyer and if so, to adjourn the ‘Initial Appearance’ in order for him to do so.

(3) Referral to Legal Counsel

This sub rule enables a Justice to refer an unrepresented accused to a lawyer before setting a date for the Arraignment Hearing.

Note to Advocates

Sub rules 2 and 3 appear to be very similar. Sub rule 2 permits an adjournment of the Initial Appearance and sub rule 3 provides that a JUDGE may refer an accused to legal counsel. Interestingly, sub rule 3 does not provide for an adjournment of the Initial Appearance. Presumably, this could be done under the provisions of sub rule 2.

(4) Preparation for Arraignment

This sub rule requires the prosecutor and the accused’s lawyer to file an Arraignment Report at the Initial Appearance; it also authorizes the Justice to adjourn the Initial Appearance in order that the report be filed. Moreover, it states that the Arraignment Hearing may not be scheduled until after the Arraignment Report has been filed.

Note to Advocates

This clearly indicates the significance of filing an Arraignment Report; it is the first instance at which the Court can scrutinize whether disclosure has been made; question number 4 on Form 1, the Prosecutor’s Arraignment Report, requires the prosecutor to state whether disclosure has been made. It is also the first instance at which the Court can scrutinize whether the prosecutor has advised the accused’s lawyer of its sentencing position. Question number 6 in Form 1 requires the prosecutor to confirm that s/he has done so. It also requires the prosecutor to advise how s/he will proceed and whether the accused will plead guilty at the Arraignment Hearing.

Advocates report that as a result of the earlier disclosure and information about the prosecutors sentencing position, the accused is receiving more information about the prosecutor’s position. Statistics may reveal whether this is resulting in more or earlier guilty pleas.

On October 20, 2000, the Chief Judge issued a Practice Direction permitting a Justice to set an Arraignment Hearing where an Arraignment Report has not been filed. However, the Justice must be satisfied that the accused has a lawyer who has received information about his case. In those cases, the Justice may set an Arraignment Hearing; the prosecutor and accused's lawyer must file their Arraignment Reports at least 7 days before the Arraignment Hearing and bring copies of it to the hearing.

Judge Hugh Stansfield stated that two things should happen at the Initial Appearance, first, the accused should be given particulars of the Crown's case and the Crown's position on sentencing and second, the accused should be encouraged to obtain legal advice and, if necessary, be advised as to how to go about doing so. Rule 6 (1) does require a prosecutor to provide disclosure to an accused, however, it might be important for the advocates to know what information the Crown intends to provide disclosure to an unrepresented accused at the Initial Appearance so that can be communicated to the person who has been victimized. Neither Rule 5 or 6 require the accused to be advised of the Crown's position on sentencing; although it appears to be the Crown's policy (in their CCFM "best practices") to provide all accused with basic disclosure at the first appearance, regardless of whether they are represented or not. However, because the Arraignment Report of the prosecutor in Form 1, question 6, only requires the prosecutor to discuss the Crown's position on sentencing with the accused's lawyer, an unrepresented accused may not be advised of the Crown's position on sentencing at the Initial Appearance. This may affect whether and at what stage the accused pleads guilty.

An unrepresented accused is not required to file an Arraignment Report in Form 2. It is anticipated that the Judge at the arraignment hearing will generally canvass the necessary issues with the unrepresented accused, but it is possible the Court will not be made aware of whether there are any disclosure issues.

Advocates should note that there are Criminal Code provisions about disclosure, which are not superseded by any provisions under the Criminal Caseflow Management Rules. For more information, please consult the BCASVACP Records Management Guidelines, Records Release Practices at number 13b.

(5) Intention to Enter Guilty Plea

If an accused indicates he intends to plead guilty, the Justice can set the matter to be heard by a Judge either immediately or on another date.

Note to Advocates

One concern that arises when an accused indicates his intention to plead guilty and the Justice sets it over to a Judge immediately is the difficulty or inability for women/ children to have prepared and filed a Victim Impact Statement. As discussed under rule 2, prosecutors are able to argue for a delay in sentencing in order to accommodate the filing of a Victim Impact Statement.

(6) Referral to Judge

This sub rule enables a Justice to refer any matter to a Judge for an Order or Directions.

Note to Advocates

This is a necessary sub rule as Justices do not have powers under the Rules beyond those specifically assigned to them under the Rules; therefore, if a problem arises which requires an order beyond a Justice's powers s/ he must refer the matter to a Judge to deal with it.

(7) Expedited Arraignment

This sub rule has two parts, (a) and (b) which deal with expedited Arraignment Hearings. Part (a) permits a Judge to order the case to go directly to an Arraignment Hearing on a date selected by the Judge and part (b) permits a Judge to change the requirement of receiving an Arraignment Report before scheduling an Arraignment Hearing. This sub rule applies when an accused is to be held in custody or if a Judge determines that it is necessary.

Note to Advocates

The Initial Appearance takes place before a Justice of the Peace outside of a Courtroom, usually in a room specially set up for Initial Appearances. The Initial Appearance takes place around a table with the Justice of the Peace at eye level to the accused; this is done in order to facilitate more natural communication.

Even though the Initial Appearance takes place outside of a Courtroom, the Initial Appearances are still a public process and any person may attend Initial Appearances before a Justice of the Peace. Some advocates caution women/children against attending at the Initial Appearance because the rooms are small and can be overcrowded. If it is important for someone to attend, either an advocate, volunteer, friend or family member of the victim may do so. Alternatively, the Crown can provide this information directly to the survivor.

RULE 6 – CROWN DISCLOSURE

(1) Early Disclosure

This sub rule requires the prosecutor to provide disclosure to the accused or his lawyer at the Initial Appearance or as soon as practical after that.

Note to Advocates

Ideally, the prosecutor provides the accused with a copy of the Information, a copy of the Report to Crown Counsel and witness statements or photographs that the Crown may have at that time; the Crown also advises the accused of its position on sentencing.

This ensures that the accused has early disclosure and therefore, is in a position to make an informed decision about the position he will take on Arraignment. Early disclosure of the Crown's case and position should enable the accused to make decisions earlier in the process and eliminate or reduce the need to return to court numerous times in order to obtain this information.

Advocates to women/ children survivors of violence and Judge Stansfield report that prior to the Rules an accused would attend at court on numerous occasions prior to fixing a date for Trial. An accused would be read the charge against him, asked if he had a lawyer and if he was ready to plead yet? Usually the accused did not have a lawyer and was not ready to plead and would be given a date to return. This process might be repeated many times in the course of an accused's case. The intent of the Rules is to avoid repeated appearances; the statistics on this matter will reveal whether the Rules have improved this situation.

(2) If Disclosure Issues Arise

This sub rule permits either the Crown or the defence to apply to a Judge for directions if there are problems with disclosure.

Note to Advocates

The express provision for either side to bring issues of disclosure to a Judge at an early stage in the process reinforces the importance that is placed on early disclosure as a means to make the process faster and more efficient.

(3) Further Disclosure

This sub rule contains two parts, (a) and (b). Part (a) makes clear that the prosecutor may provide disclosure on an ongoing basis as more information becomes available to him/her and the Crown continues to have an obligation to provide that disclosure in a timely way. Part (b) permits the defence to apply for more or better disclosure; presumably this permits the defence to apply for disclosure more than once in the course of a case.

RULE 7 ARRAIGNMENT REPORT

(1) Filing an Arraignment Report

This sub rule requires the prosecutor to file an Arraignment Report in Form 1 with the Court at the Initial Appearance and to provide a copy to the accused or his lawyer. The accused's lawyer is also required to file an Arraignment Report in Form 2 with the Court at the Initial Appearance and to provide a copy to the prosecutor.

Note to Advocates

The primary purpose of the Arraignment Report is to complete a meeting between Crown counsel and the defence counsel, in that the report cannot be prepared unless and until they have discussed the case. A fundamental premise of any case management system is that while the process must be "judicially driven", it is the lawyers who resolve cases. That will only happen if they bring their professional judgment to bear at an early stage, and don't wait until the trial date to discuss the case.

Note that an unrepresented accused is not obliged to file an Arraignment Report. It is anticipated that the Judge at the arraignment hearing will generally canvass the necessary issues with the unrepresented accused, but it is possible the Court will not be made aware of whether there are any disclosure issues. Therefore it will be important for there to be close communications between the Crown and the survivor and/or advocates regarding these matters.

A Practice Direction was issued on October 20, 2000, permitting a Justice of the Peace to set an Arraignment Hearing where no Arraignment Report was filed under certain conditions. The conditions are set out in this Guide under sub rule 5(4).

(2) Attend Before Judge if Arraignment Report not Filed in Time

This sub rule authorizes the Justice of the Peace to refer a failure to file an Arraignment Report to a Judge who has the authority (under sub rule 5(6)) to make any type of order which will ensure the purposes of the Rules is achieved.

RULE 8 ARRAIGNMENT HEARING

At the Arraignment Hearing the accused advises the Court as to how he wishes to proceed with the charge(s). The majority of cases involving violence against women in relationships are cases in which the Crown “proceeds summarily”. In such cases the entire proceeding will take place in Provincial Court, and the accused’s only choice at the arraignment hearing is whether he pleads guilty or not guilty. In a smaller number of cases, and cases involving child sexual abuse and many sexual assault cases, the Crown “proceeds by indictment”, in which case the accused has a choice as to whether he wishes to be tried in the Provincial Court (in which case he will be asked to plead guilty or not guilty), or whether he wishes to be tried in the Supreme Court, either by a Judge alone or by Judge and Jury, in which case the Provincial Court will schedule a preliminary inquiry, a hearing to determine whether there is enough evidence to justify a trial taking place.

(1) Who Shall Attend

This sub rule sets out who is required to attend at the Arraignment Hearing, they are:

- the accused
- the accused’s lawyer and
- the prosecutor

Note to Advocates

It is important to note that Form 1 does not require the Crown to advise the Court as to the readiness or availability of the survivor/witness.

The Honorable Judge Stansfield stated that the purpose in requiring the accused, Crown and defence lawyer to attend is for the Court to be able to enquire and be assured that the questions in the Arraignment Report have been addressed and discussed by the lawyers.

On February 16, 2000, the Chief Judge issued a Practice Direction permitting the accused’s lawyer to apply to be excused from attending the Arraignment Hearing if the lawyer normally practices more than 25 kilometers from the Court where the hearing is to take place. The accused’s lawyer must advise the Justice of the Peace who presided at the Initial Appearance why it would be unreasonable or unnecessary for him/her to appear. The Judge at the Arraignment Hearing may require the accused’s lawyer to attend at a future date if the objectives of the Arraignment Hearing cannot be met without the accused’s lawyer being present.

One of the benefits of having a Judge make enquiries of a case is that counsel are accountable to the Court for the progress of a case; this should lessen unnecessary or tactical delays, which increase the stress on women/children survivors of violence and witnesses.

The Practice Direction raises the issue of how the Court will be able to assess the status of the defence’s case if defence counsel do not attend the Arraignment Hearing. In some circumstances the Judge may direct that there be a pre-trial conference undertaken by telephone, or steps taken to address any issues of concern to the judge.

(2) Powers of Judge

This sub rule sets out the powers of a Judge at the Arraignment Hearing. It consists of parts (a) to (h). Part (a) authorizes the Judge to ask the accused to elect how he is going to proceed or to enter a plea to the charges against him. Part (b) authorizes the Judge to ask questions in order to ensure the scheduled length of time for a Trial or Preliminary inquiry is accurate and it authorizes the Judge to ask questions, which would remove issues from or streamline the Trial or Preliminary Inquiry.

Part (c) enables the Judge to give directions to the Trial Scheduler about the time set for the matter; directions from a Judge should override any time estimates or requests from counsel. Part (d) simply permits the Judge him or herself to set the time for the Trial or Preliminary Inquiry if there is no Trial Scheduler.

Part (e) gives the Judge broad authority to make any order to achieve the purpose of the Rules or to facilitate the Trial or Preliminary Inquiry or to simplify or dispose of issues. Part (f) permits the Judge to adjourn the Arraignment Hearing in order to allow compliance with any Order under part (e). These parts provide a Judge with ample authority

and flexibility to make orders that will meet the objectives of the Rules. They also provide Judges with the ability to be flexible in cases.

Part (g) authorizes the Judge to adjourn a case if the accused is not represented by a lawyer, in order to permit the accused to meet with a lawyer.

Part (h) authorizes a Judge to hear applications if it is convenient and practical to the Court and all parties.

Note to Advocates

This sub rule provides broad authority to Judges to make enquiries, it reinforces the case management aspect of the Rules; Judges have the authority to ensure the length of time asked for is well founded.

The sub rule enables the Judge to hear applications that are related to the case, such as applications for disclosure. However, the Judge may refuse to hear the application if s/he finds it is either not convenient or not practical. Similarly, either the prosecutor or the accused's lawyer may object to an application by arguing it is not convenient or practical for the application to be heard at that time. A lawyer may argue, for instance, that s/he did not know about the application and that s/he was unable to remain in Court to deal with the matter; therefore, it would not be convenient or practical to deal with the matter at that time.

(3) Idem

Sub rule (3) reaffirms the accused's right to confidentiality of communications with his lawyer and his right to remain silent.

(4) Guilty Pleas

Sub rule (4) deals with an accused who enters a guilty plea at the Arraignment Hearing. It consists of parts (a) and (b). Part (a) enables a Judge to conduct a Sentencing Hearing at the Arraignment Hearing. Part (b) permits the Judge to adjourn the sentencing to a later time or date.

(5) Idem

Sub rule (5) permits a Judge to hear an accused's guilty plea before the date set for the Arraignment Hearing if the Trial Scheduler makes this arrangement and the prosecutor has been consulted.

Note to Advocates

It is important to understand that the Victims of Crime Act in British Columbia provides that survivors of crime are to be "given a reasonable opportunity to have admissible evidence concerning the impact of the offence, as perceived by the survivor, presented to the court before sentence is imposed for the offence". (Section 4 of the Victims of Crime Act, RSBC 1996, c. 478)

In addition, there are provisions in the Criminal Code regarding the provision of victim impact statements. Section 722 of the Criminal Code of Canada requires a Judge to consider victim impact statements in determining an offender's sentence if a province has a designated Victim Impact Statement Program. Section 722.2(1) requires a sentencing Judge to inquire as to whether survivors have been advised of their opportunity to provide such a statement. While as of September 2001, British Columbia did not have a designated Victim Impact Statement Program, the British Columbia Criminal Justice Branch reports that victim impact statements are routinely submitted and accepted by all Courts in British Columbia.

Guilty pleas at or before the Arraignment Hearings may present challenges for women/children survivors of violent crime who have not prepared a victim impact statement. On the one hand a guilty plea disposes of the need to attend at Court and give evidence and it results in a publicly recorded disposition of the charges. On the other hand, there may be women/children who want to provide a Victim Impact Statement to the Court prior to the sentencing of the accused. This situation raises issues regarding the appropriate balance between not delaying or derailing guilty pleas and the importance of providing survivors with time to provide a victim impact statement so that they are better able to articulate the full impact of the crime.

Some accommodation may be necessary for women/children survivors of crime to prepare a victim impact statement. A guilty plea and sentence on the date set for Arraignment may not provide enough time for the survivor to provide that statement or to have obtained a referral

to specialized victim services. An example of accommodation might include approaching the Crown to seek an adjournment in order for the woman to complete her victim impact statement and to be referred to specialized victim services for assistance with this.

The Criminal Justice Branch advises that advocates should provide Crown Counsel with any victim impact information as soon as it is available in the event of a guilty plea as there is no guarantee that adjournments will be granted for this reason. They also advise that victim impact information can be updated if appropriate and time permits.

Clearly, advocates need to be aware that these events may occur and advise their clients of this potentiality.

Where an accused decides to enter a guilty plea before the Arraignment Hearing, it will be important for the advocate to keep current with the Crown Victim/Witness office and/or the Trial Scheduler to ensure she is apprised of the dates for the hearing of these early guilty pleas.

(6) Setting Time for Trial or Preliminary Inquiry

This sub rule contains two parts (a) and (b). Part (a) requires the Trial Scheduler to set the dates for a Trial or Preliminary Inquiry or any applications in accordance with the Judges time estimates and in accordance with any other directions of a Judge. Part (b) requires the Trial Scheduler to set a Trial Confirmation hearing before either a Trial or Preliminary Inquiry. The Trial Confirmation hearing must not be less than 30 days before either the Trial or Preliminary Inquiry.

(7) Idem

If there are problems with scheduling the Trial or Preliminary Inquiry, the Trial Scheduler may refer these problems and the information about the problems to the Judge at the Arraignment Hearing.

Note to Advocates

This relieves the Trial Scheduler from dealing with difficulties with counsel or their schedules; a referral from the Trial Scheduler makes the judiciary aware of the problems and puts them before a Judge who is in a position to resolve them in order to keep the case progressing through the system.

RULE 9 – TRIAL READINESS REPORT

(1) Trial Readiness Report

This sub rule has two parts, (a) and (b). Part (a) requires the prosecutor to file a Trial Readiness Report in Form 3 and to give a copy to the accused's lawyer or the unrepresented accused. Part (b) requires the accused's lawyer to file a Trial Readiness Report in Form 4 and to give a copy to the prosecutor.

(2) Idem

This sub rule excuses the accused's lawyer from attending the Trial Confirmation Hearing if s/he files the Trial Readiness Report (Form 4) at least 7 days before the hearing.

Note to Advocates

The Trial Readiness Hearing is intended as a "check in" approximately 30 days before the date for trial or preliminary inquiry for the Court to be satisfied that the prosecutor and defence are ready to proceed. By determining whether cases are not ready to proceed or whether there is to be a guilty plea or stay of proceedings, the Rules are intended to save the Court's time and avoid witnesses attending court unnecessarily. Form 3 contains a series of questions which the prosecutor must answer to establish that the prosecution is ready to proceed. Question number 5 of Form 3 asks the prosecutor to confirm that all the prosecution's witnesses are able to attend on the date set for Trial or Preliminary Inquiry. In cases of violence against women in relationships, or child witnesses, the prosecutor may not be able to provide the Court with this confirmation because women/ children survivors of violence may be reluctant to give evidence, children may not be ready, there may be practical considerations like school exams for instance that need to be taken into consideration. It is very helpful for the advocate to be in close communication with Crown about these issues.

The requirement for this confirmation in Form 3 requires reconciliation with the VAW Policy of "pursuing a rigorous approach to arrest, charge and prosecution" of violence in relationships.

The rationale for vigorously pursuing arrest, charge and prosecution has been canvassed and addressed as a policy matter in the Violence Against Women in Relationships Policy of the Ministry of the Attorney General. Advocates may need to consult with and advise prosecutors of the need to explain to the Judge that the survivor is reluctant or unavailable but that they are nevertheless intending to proceed to Trial. A number of factors may mitigate the effect of a survivor not being confirmed as a witness. First, the survivor may need additional support in order to make herself available for the Trial and second, the defence may plead guilty at a point closer to or at the Trial.

Sometimes women/ children are afraid or don't have the support to proceed with a criminal hearing against someone they love or once loved. Without the support, they may appear as reluctant witnesses. Advocates can advise Prosecutors of a survivor/ witness' situation and of effective ways to support survivor/ witnesses to attend Court and testify. It is the experience of most advocates who perform front line services that with support women/ children become willing participants in the court process.

Advocates should be aware that a failure to answer question 5 in Form 3 positively does not prohibit the Court from setting the matter for Trial. Nothing in the Rules or the Form binds the Court or requires the Court not to proceed in the absence of a positive answer; indeed, it may be more effective for the Court to proceed and hear the matter as it will result in an ultimate disposition as opposed to a series of requests for adjournments for example. Judges too may need to be reminded about these factors and the importance of a rigorous approach.

Certainly, Judges will be in a position to pressure the prosecutor about whether there is a reasonable prospect the case will proceed and the prosecutor will no doubt be prepared to meet this pressure. Judges have no interest in seeing cases abandoned which have some prospect of being determined on their merits, but nor do they want to see court time lost if there was no realistic prospect of the trial proceeding. Some assistance may be had by the Judges ability to vary or dispense with a rule if it is in the interests of justice, under rule 2(3). There may be cases where the prosecutor would argue that it is in the interests of justice to proceed with the prosecution despite the ambivalence of the survivor at this time.

RULE 10 – TRIAL CONFIRMATION HEARING

This is a new requirement in the criminal prosecution of cases. Under the Rules Trial and Preliminary Inquiry dates are intended to be set by the Trial Scheduler as opposed to in the Courtroom.

(1) Accused Shall Attend Trial Confirmation Hearing

The sub rule requires the accused and the prosecutor to attend a Trial Confirmation Hearing where the Judge reviews the Trial Readiness Reports and confirms the time estimates for the Trial or Preliminary Inquiry.

Note to Advocates

It is at this juncture that the Crown will have to meet any concerns of the Court with regard to the unavailability of the survivor.

(2) Review of Trial Readiness Report

This sub rule contains two parts (a) and (b) which authorize a Judge to adjourn the Trial Confirmation Hearing if s/he is of the view, from reviewing the Trial Readiness Reports, that the accused's Trial or Preliminary Inquiry will not end within the time set for the Trial or Preliminary Inquiry. Part (a) authorizes the Judge to adjourn the Trial Confirmation Hearing to a time for the Court to issue Directions. Part (b) authorizes the Judge to make any Orders to deal with applications by the defence under the Charter; this includes setting a time for a hearing of the defence's applications including applications regarding records and past sexual history.

Note to Advocates

These applications can be complex and sensitive and therefore, a separate hearing may be warranted to enable the lawyers to prepare and to ensure sufficient time is allocated to hear the issues.

Advocates should note that there are Criminal Code provisions about disclosure, which are not superseded by any provisions under the Criminal Caseflow Management Rules. For more information, please consult the BCASVACP Records Management Guidelines, Records Release Practice at number 13b.

RULE 11 – ADJOURNMENT OF TRIAL OR PRELIMINARY INQUIRY

(1) Application of the Rule

This sub rule states that the rule applies only to applications for an adjournment that are made after the dates for the Trial or Preliminary Inquiry have been set but before they have begun.

Note to Advocates

In other words, if at some point after the matter has been set down for a Trial or Preliminary Inquiry, but before it has commenced, a lawyer requires an adjournment, s/he will be guided by this rule.

(2) When Application to be Made

This sub rule requires either the Crown, defence or an unrepresented accused to apply for the adjournment as soon as s/he becomes aware of the need for one.

Note to Advocates

This is meant to prevent accuseds and lawyers from waiting until the last minute to notify the Court and the other side of its inability to proceed. It should have the effect of permitting the Court to schedule other matters in the time previously allocated to the one being adjourned therefore, making more efficient use of the Court's time. Presumably, a Court could have reference to this sub rule in making orders if an applicant has not advised the Court in a timely manner of his/her need for an adjournment.

(3) Notice of Application

This sub rule states that at least two days notice is required of the application for an order to adjourn. The party wanting the adjournment must file a Notice of an Application to Adjourn in Form 5 with the Court and provide a copy to each party two days before the application is heard. The sub rule does permit a Judge to dispense with this notice requirement.

Note to Advocates

The fact that the party seeking the adjournment must apply for an order to do so and must complete and file a Form 5 explaining the facts as to why an adjournment is needed reinforces the monitoring role of the Court under the rules. Parties will be required to account to the Court for their inability to attend a previously scheduled hearing. This too should reduce the amount of unnecessary and tactical delays in the criminal process.

RULE 12 – NOTICE BY COUNSEL

(1) Prompt Notice to the Court

This sub rule requires counsel to notify the Court promptly if there are changes in the representation of the accused or in the time estimates given. There are three parts to this sub rule, part (a) requires the Court be notified if there is a change of counsel for the accused. Part (b) requires the Court be notified if counsel for the accused withdraws. Part (c) requires the Court be notified if the time estimates which have been given are wrong.

(2) Counsel Assuming Conduct after Arraignment Hearing

This sub rule applies to counsel for the accused who begin representing the accused after the Arraignment Hearing. There are two parts to this rule, part (a) and part (b). Part (a) requires counsel for the accused to file a written notice to the Court that s/he is representing the accused and to provide a copy of this to each party. Part (b) requires her/him specifically to review the time estimate given to the Court for the accused's Trial or Preliminary Inquiry.

Note to Advocates

This specific direction to review the time estimates puts the onus on the accused's lawyer to do so and to advise the Court of any changes needed in the time estimates; this reinforces the Rules intention to make efficient use of the Court's time.

RULE 13 – CONTINUATIONS

(1) Order for Continuation within 30 days

This rule permits a Judge to order that a matter may be scheduled to continue on a future date if it does not conclude in the time originally scheduled. A Judge must consult with the Trial Scheduler and the date set for continuation must be within 30 days.

RECOMMENDATIONS

The following are a series of recommendations for further enquiries that would assist the BCASVACP and Violence Against Women (VAW) Co-ordination Committees to better assess the effect of the Rules on cases of violence against women/children.

1. It is recommended that Criminal Justice Branch, Court Services Branch and the Provincial Court consult with Violence Against Women Co-ordination Committees (VAW) and all victim assistance programs so they can exchange advice and feedback with regard to the monitoring and implementation of the Rules.
2. It is recommended that the Community Justice Branch provide to the BCASVACP and to VAW Co-ordination Committees the relevant statistics on the numbers of domestic violence, sexual assault and child abuse cases and their disposition and the length of time to resolution before and after the Rules. Statistics on the following issues would be useful to assess the efficacy of the rules and their impact on cases of violence against women/children:
 - a. What statistics are available regarding the length of time from Initial Appearance to resolution both pre and post Rules?
 - b. What statistics are available regarding the number of (Initial) Appearances an accused had both pre and post Rules?
 - c. What statistics are available regarding the number of stays, by judicial district both pre and post rules?
 - d. What statistics are available regarding at what stage in the process guilty pleas are made both pre and post Rules?
 - e. What statistics are available regarding whether the accused who plead guilty were represented or not both pre and post Rules?
 - f. What statistics are available regarding the number and percent of guilty pleas both pre and post Rules?
 - g. What statistics are available regarding the length of time from guilty plea to disposition both pre and post Rules?
 - h. What statistics are available regarding disposition and sentences, by charge both pre and post Rules (including use of alternative measures)?
 - i. What percentage of accused's are unrepresented and/or at what stage do they obtain representation both pre and post Rules?
 - j. What impact does the failure of defence counsel to attend Arraignment Hearings have on the number of Arraignment Hearings scheduled in a case?
3. It is recommended that the BCASVACP, Advocates and VAW Co-ordination Committees participate in the review process to be conducted by Judge Tony Spence. A Notice to the Profession was issued in the March 2001 issue of *The Advocate* magazine announcing a "formalized review phase for the Rules". The review begins April 1, 2001 and will be overseen by Associate Chief Judge A. J. Spence. There will be meetings of interested parties in each of the judicial districts as outlined in the implementation schedule. The meetings will conclude in December of 2001. The meeting dates will be publicized in each judicial district and the dates may be obtained from the Administrative Judge for each district.

Written submissions may be submitted to Associate Chief Judge A. J. Spence at 501 – 700 West Georgia St., Vancouver, B.C.
4. With regard to Rule 4(3), the effect of the Rule is not clear regarding whether the Crown or defence counsel have the obligation to file all the reports they filed at the original venue at the new venue. If not, are these reports transferred by the Court? If not, does the original Court keep those records? It is recommended that the BCASVACP and VAW Co-ordination Committees enquire what the obligation of the lawyers is under this Rule and what the practice is across the Province.
5. It is recommended that Advocates should know how file ownership is handled in Crown offices. There are different models of file ownership; it will be important to know what staff and Crowns are handling a file at each of the following stages: Charge approval, Initial Appearance, Arraignment Hearing, Trial Confirmation Hearing and Trial or Preliminary

Inquiry. Clients may want to know who will be in contact with them at different stages of the process and what their approach will be.

6. It is recommended that the Corrections Branch, Victim Services Division should advise victim service providers as to whether victim/witness notification practices have been altered as a result of the Rules. If additional staff are required, Victim Services Division should ensure the necessary resources have been provided to perform victim witness notification.

7. With regard to Rule 5(4)(a), 6(1) and 7(1)(a) it is recommended that Advocates and VAW Co-ordination Committees should enquire of the Crown its approach on providing disclosure to an unrepresented accused and the Crown's approach on providing its position on sentencing to an unrepresented accused. This information is important as it may affect when and whether a guilty plea will be entered by the accused.

8. With regard to Rule 8(1) and the February 16, 2000 Practice Direction, it is recommended that BCASVACP and VAW Co-ordination Committees enquire what the rationale is in permitting defence counsel to be absent at Arraignment Hearings and to enquire how the Court will be able to monitor the progress of a case if the defence is not there to provide information to the Court as to the status of the defence's case?

9. With regard to Rule 8(5), it is recommended that Advocates and the Crown discuss the issues raised by the occurrence of guilty pleas where women/children survivors of crime have not completed a victim impact statement including how to determine the appropriate balance between not delaying or derailing guilty pleas and the importance of providing survivors with time to provide a victim impact statement so that they are better able to articulate the full impact of the crime.

10. Given the range of authority conferred on Justices of the Peace under the Rules and the potential impact of the Rules on survivors of violence, it is recommended that training regarding the dynamics of victimization and abuse be made available to Justices of the Peace.

APPENDICES

- I. Criminal Caseflow Management Rules
- II. Commencement schedule for the application of the Rules
- III. October 20, 2000 – Practice Direction
- IV. February 16, 2000 – Practice Direction