



DISCUSSION PAPER: Regarding the conduct of applications for judicial interim release in the Provincial Court of Manitoba

Crown Attorneys have a critical role in the conduct of applications for judicial interim release, otherwise known as bail. When an accused person makes an application for release on bail and the Crown opposes that person's release, it is essential that any hearing that occurs be carried out in a manner that enables the presiding Judge to make an informed decision. The current procedures followed in Winnipeg make this task incredibly difficult and hampers the Crown's critical role in bail hearings to assist the Court in making the best decision possible by providing the court with all relevant information.

How Bail Hearings are conducted in Manitoba

The *Criminal Code* requires that upon arrest an accused must be brought before a Justice within 24 hours of their arrest or be released by police. In Manitoba this is accomplished by the appearance of accused in front of a Judicial Justice of the Peace (JJP). If an accused is not released by police, a Crown Attorney and either Duty Counsel or the accused's own counsel will discuss if there are conditions upon which the parties can agree to the accused's release. If agreement on release cannot be reached by the parties, the accused can either consent to going into custody or have a contested hearing in front of a JJP. A Crown Attorney and Duty Counsel work on these matters 24 hours a day, 365 days a year.

Contested hearings for bail are rarely heard by JJPs because most accused are advised by their counsel to wait to appear in front of a Judge in bail court. This advice is virtually always followed. JJPs are available every day of the year.

Following this initial appearance in front of a JJP all adult accused appearing in Winnipeg next appear in the bail triage court that starts at 9:30am every weekday in front of another JJP.¹ From the bail triage court, adult accused can transfer into a bail court presided over by a Provincial Court Judge starting at 10:00am where the hearing occurs. That transfer can occur the same day, often without notice to the Crowns appearing in the Judge's Court.

Court centres in Brandon, Dauphin, The Pas, Portage la Prairie and Thompson generally deal with bail matters at 10:00am in a Provincial Judge's Court, every weekday. Young Persons the Crown is seeking to detain appear at 2:00pm at the Manitoba Youth Centre in front of a Youth Court Judge when appearing in Winnipeg or at 10:00am in regional court centres.

The day-to-day work of a Crown Attorney in adult bail courts in Winnipeg

Crown Attorneys working in bail court generally work in pairs of two and are responsible for half of the matters in their court during a weeklong rotation. Any matters appearing in bail triage court on a given day can be transferred into their designated court for hearings commencing at 10:00am. As noted, no prior notice of the transfer is required. Matters can be transferred in until 11:30am at which time transfers are cut off and they remain in the triage court until they are dealt with in some fashion, which includes the ability to make an application for bail in front of the JJP. Not all matters will be transferred into the Judge's bail courts and the precise number that are transferred fluctuates each day. Although some defence counsel will tell the Crown Attorney dealing with their client that they intend to run a bail or put the accused to the next day's docket, they are not required to and don't always do so.

This system requires Crown Attorneys working in bail court to be able to address every matter on their half of matters in the triage court. There are often more than a hundred accused on the triage docket, and hundreds of sets of charges (each set could contain multiple charges).

An accused's charges can appear on the bail triage docket for five days before they are required to be adjourned out of the bail triage court (unless their counsel receive an extension of the time from the court). Accused's whose charges are adjourned off the bail triage docket without having made a bail application can request to have their charges brought back onto the bail triage docket at virtually any time. When they do, they can be adjourned from day to day for five days before a bail application is made or they are again adjourned out of the bail triage court.

This system requires the Crown Attorney to review a considerable volume of disclosure from police. It involves reviewing the accused's prior criminal record, not just what the accused was convicted of, but also the nature and circumstances of the offences for which they were convicted. Upon review, the Crown Attorney may find that disclosure is missing on some charges, or that they have

¹ Upon appearance in the bail triage court, matters are designated as Domestic Violence (DV) or Adult Custody (AC).

further questions of police about the investigation. The Crown Attorney may find that the accused's criminal record is not up to date with the most recent convictions. Crown Attorneys, particularly in dealing with domestic violence matters, may need information from Victim Services about the circumstances of the victim. Most accused appearing in bail court have been released previously (sometimes multiple times) and the Crown Attorney needs to understand the circumstances of each of those previous releases.

The Crown also spends time speaking with defence counsel about the accused's plan for release. When a release plan is provided by counsel, the Crown does its best to investigate and cross-reference details of the plan such as proposed addresses, among other aspects. They need to make sure the victim is not living at or near the location. They need to confirm that the address exists or is a habitable residential property. They need to investigate the backgrounds of sureties. This is one of the most important parts of a rigorous examination of a bail plan.

The Crown Attorney needs to do this all before they can agree to the release of the accused or, when they receive the information in advance of a contested hearing, before that hearing occurs. The Crown Attorney will sometimes be required to remain in bail court into the early evening. When they leave court, most Crown Attorneys will spend part of their evening reviewing files for the next day and staying on top of their regular files and assignments.

Much of this work occurs while the Crown Attorney is appearing in Court.

The atmosphere in bail court is exceptionally fast-paced and frenzied given the number of matters that could potentially go before a Judge. As the process currently operates the Crown Attorney, responsible for ensuring all relevant information is before the Judge when the Judge is considering release of the accused, has limited to no certainty about which matters will be proceeding prior to court beginning. The volume of material Crown Attorneys in bail court are responsible for managing is astonishing. Invariably Crown Attorneys are put in an impossible position to both conduct the bail docket and prepare for all potential bail hearings. When Crown Attorneys are unable to carry out these significant duties to the public, the accused and the court, our justice system suffers.

More to the point, the many accused appearing on a bail docket on any given day will not make bail applications that day and the unnecessary preparatory work required by Crown Attorneys in these circumstances is an inefficient and wasteful use of public resources. Resources that are desperately needed to ensure safe communities.

Public safety and public confidence in the administration of justice would be better served by a system that allows Crown Attorneys appropriate notice of a bail hearing and adequate time to prepare for those hearings and for the Judge to hear fulsome submissions.

Bail in Neighbouring Provinces

Although notice requirements and local practice varies in neighbouring provinces such as British Columbia, Alberta, Saskatchewan and Ontario, virtually all require some notice prior to the commencement of court. Many provinces require bail applications not made within the first twenty-

four hours to be case-managed and pre-scheduled. Even where same day applications are allowed, usually several hours of notice prior to court are required.

Manitoba appears to be the only jurisdiction where matters can be put into a Judge's bail court after that court has started sitting and with no notice.

Recommendation

- 1) The Provincial Court of Manitoba should issue a new practice directive requiring twenty-four hours notice before a matter can appear in front of a Judge's court for a contested bail. If no bail application is made, the matters should be adjourned back to the bail triage court (or out of bail court entirely), where the same twenty-four-hour notice requirement would apply. This notice and adjournment of the charges would occur in the bail triage court.
- 2) Any matters that have left the bail triage court after their first appearance on the bail triage docket and have been brought back onto it later, must proceed to a Judge's bail court the day after they appear in bail triage court. If no application is made those matters ought to be adjourned off the bail triage docket.

Why This Will Improve Bail Court

In practical terms, this would mean that any matters appearing in the bail triage court where the accused is seeking to make a bail application in front of a Judge would need to give notice to the Court and Crown by 10am prior to the day in which it will appear in front of the Judge.² It will allow Crown Attorneys the opportunity to properly prepare for a smaller number of hearings that *will* proceed, not a much larger number of hearings that *might* proceed.

It would further mean that matters brought forward for bail after the accused has declined to make an early bail application are brought back to bail court to make an application, not to sit on the docket while the accused's counsel puts a bail plan together that *might* proceed.

MACAs proposal recognizes and respects the accused's constitutional right to the presumption of innocence and right under the *Charter of Rights and Freedoms* to reasonable bail. We respect the independence of the judiciary and its right to govern its own process. This system would result in better outcomes for the justice system, judges who are better informed of the accused's bail plans and a more efficient system of triaging those who do wish to apply for bail. Our proposal is to create a system of proper notice for bail hearings that will maintain public confidence in the criminal justice system. These procedural changes require no changes to the *Criminal Code of Canada*, no new funding and no changes in legislation.

² Accused persons would still be able to make a bail application in front of the JJP in the bail triage court during the week following their arrest. The Court should require appropriate advanced notice be given in relation to any of these applications, but less notice than twenty-four hours.