



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2023/08/14

Number: CPD - 4

Title:

Criminal Practice Direction

Procedure for Detention Reviews Under s. 525 of the *Criminal Code*

Summary:

This practice direction sets out a general procedure for detention reviews under s. 525 of the Criminal Code following the Supreme Court of Canada's decision in R. v. Myers, 2019 SCC 18. The procedure (which was reflected in the interim practice direction that this practice direction replaces) was initially developed in a series of meetings with representatives of the Supreme Court and Provincial Court judiciary, Crown counsel, defence counsel, the Legal Services Society, BC Corrections, Court Services Branch (including court sheriffs), Ministry of Children & Family Development, and the Court's Scheduling and legal staff. The procedure has been revised to reflect experience with it, and to accommodate amendments to s. 525 contained in An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, S.C. 2019, c. 25 (Bill C-75).

The procedure is designed to bring the accused person before the Court at the earliest opportunity after they have been detained in custody pending trial for 90 days (or 30 days for a young person detained on charges for which they are being prosecuted by way of summary conviction), while also ensuring that Crown and defence counsel are notified and have access to the necessary materials in sufficient time to be ready to proceed or, in the case of defence counsel, assist the accused person in determining whether or not to waive their right to a s. 525 hearing. Three main steps are involved.

In the first main step, Corrections staff will initiate the application process by submitting a written application to a central address at Supreme Court Scheduling.

In the second main step, a Scheduling Hearing will be held at a date and time set out in a notice issued by Supreme Court Scheduling, in the location indicated in that notice. The accused

person will appear by video-link. Scheduling Hearings will take place in Vancouver. Crown or defence counsel may appear by telephone or video-link (if easily available).

In the third main step, a Detention Review Hearing will take place at the time, date, and location fixed by the Court, unless the accused person waives their right to have one. Detention Review Hearings will usually be held in the Supreme Court location closest to where the trial will be held, or in the main Supreme Court location in that region, but may be held elsewhere to convenience the various parties involved, if the Court so directs.

Direction:

Application by Person Having Custody of the Accused Person

1. The warden of the institution where an accused person is in custody will cause the Application required under s. 525(1) of the *Criminal Code* to be prepared and delivered.
2. Each Application is to be delivered by email as a separate document attachment to the Supreme Court Scheduling Detention Review Coordinator at *detention.review@bccourts.ca*.

Notice of the Scheduling Hearing

3. The Court will review the Application and schedule a Scheduling Hearing.
4. Scheduling Hearings will take place at the Vancouver Law Courts, with the accused person appearing by video-link from the institution where they are detained.
5. The Detention Review Coordinator will prepare and deliver a notice of the date, time and location of the Scheduling Hearing (a Notice of Scheduling Hearing) and a copy of the Application to the accused person, care of the institution where they are detained, and will send copies by electronic means as follows:
 - a. if the Public Prosecution Service of Canada has conduct, to the designated central email address provided for this purpose: *federal525notices@ppsc-sppc.gc.ca*;
 - b. if the British Columbia Prosecution Service has conduct, to the designated central email address provided for this purpose: *525bcps@gov.bc.ca*, or to the designated email address for the relevant Regional Crown Office;
 - c. to defence counsel, if known; and
 - d. to the Legal Services Society, if its assistance is required in relation to identifying defence counsel for the accused person.

Intervening Events that Make the Accused Person Ineligible

A. Application to end the process due to ineligibility

6. If, during the process, one of the following events intervenes, Crown or defence counsel should submit an application to end the detention review process to the Court by email to the Detention Review Coordinator no later than 12:00 noon the day before the date of the next scheduled appearance, with a copy to the designated central email address for Crown counsel with conduct of the matter, or to defence counsel if it is Crown counsel submitting the application:
 - a. the accused person has been released from custody;
 - b. the accused person has entered a guilty plea, in relation to all of the charges that are the subject of the Application, or all of those charges have otherwise been disposed of;
 - c. the accused person has been sentenced in relation to all of the charges that are the subject of the Application; or
 - d. the trial of the accused person in relation to the charges that are the subject of the Application has commenced.
7. The application should be made using the [Application to End the s. 525 Detention Review Process Due to Ineligibility Form](#) attached as **Appendix A**. Counsel may type their name on the "Counsel Signature" line instead of signing by hand, and the typed name will have the same effect and formality as a signature so long as it is clearly indicated in the email submitting the application that counsel endorses the contents.
8. If Crown counsel is submitting the application, Crown counsel must confirm, by ticking the box on the form, that they have consulted with defence counsel regarding the application, and defence counsel agrees that the detention review process should be concluded based on the reason indicated in the form.
9. A judge of the Court will review the application, and, if the judge determines that the detention review process should be concluded on the basis of the statements in the form, the judge may so order by signing the relevant portion of the form.
10. If the judge signs the form, the Detention Review Coordinator will reply to Crown and defence counsel to notify them that the detention review process is concluded, and will direct that any future appearances in the detention review process be cancelled.
11. If the judge determines that the detention review process should not be concluded on the basis of the form, the Detention Review Coordinator will reply to Crown and defence counsel to notify them that the process will continue as scheduled.
12. If the accused person is released from custody, Corrections may notify the Court by email to the Detention Review Coordinator. Upon receipt of this information, the Detention Review

Coordinator will notify Crown and defence counsel, and the detention review process will be concluded.

13. If Crown or defence counsel believe the accused person is ineligible for a detention review for a reason other than one of the reasons indicated above, counsel should speak to the issue at the next scheduled appearance. Alternatively, counsel may contact the Detention Review Coordinator and ask for the matter to be added to a Scheduling Hearing date and speak to it then.

B. Guilty Pleas

14. Where counsel advises the Court on the record that the accused person has entered a guilty plea in relation to all of the charges that are the subject of the Application, the Application will be concluded, unless the judge, based on counsel's submission, directs that the Application be adjourned to a Scheduling Hearing date up to six months in the future to allow for the possibility that the accused person's eligibility may change.
15. If the detention review process is concluded as a result of a guilty plea prior to the Detention Review Hearing, and the accused person is later permitted to withdraw the guilty plea, Crown or defence counsel may request that the process be reactivated based on the original Application, by sending an email to the Detention Review Coordinator.
16. If the Application is adjourned for a lengthy period as a result of a guilty plea, defence counsel may, at any time, email the Detention Review Coordinator to call the Application ahead to an earlier Scheduling Hearing to be spoken to, or may submit an application to conclude the process due to ineligibility.

Adjournment

17. Counsel must make every effort to avoid adjourning Scheduling Hearings. This will help ensure that detention review hearings take place at the earliest opportunity, in order to "prevent an accused person from languishing in pre-trial custody and to ensure a prompt trial by subjecting lengthy detentions to judicial oversight": *Myers* at para. 41.
18. If adjourning the Scheduling Hearing is nonetheless necessary, defence counsel may adjourn it to a Scheduling Hearing date no later than 45 days after the initial Scheduling Hearing, by delivering a completed copy of the [Adjournment Form](#) attached as **Appendix B**, by email to the Detention Review Coordinator no later than 4:00 pm the day before the Scheduling Hearing with a copy to the designated central email address for the level of Crown counsel with conduct of the matter.
19. Upon receipt of a properly completed [Adjournment Form](#), the Detention Review Coordinator will reply to Crown and defence counsel, and confirm the new date and time of the Scheduling Hearing.
20. After 45 days from the date of the first Notice of Scheduling Hearing, the [Adjournment Form](#) may no longer be used, and defence counsel, or a properly instructed agent, seeking an

adjournment must appear at the next Scheduling Hearing to speak to the status of the matter and explain why a further adjournment is necessary.

21. If an Application is adjourned for a lengthy period, defence counsel may, at any time, email the Detention Review Coordinator to call the Application ahead to an earlier Scheduling Hearing.

Waiver

22. If at any time during the process an accused person wishes to waive their right to have a detention review under s. 525, defence counsel may complete the [Waiver Form](#) attached as **Appendix C**, and submit it on behalf of the accused person by email to the Detention Review Coordinator with a copy to the designated central email address for the level of Crown counsel with conduct of the matter.
23. Defence counsel must retain the original [Waiver Form](#) until the earliest of:
 - a. the date on which the proceeding, including any appeals, is finally disposed of;
 - b. the date on which the appeal period for the proceeding has expired if no notice of appeal respecting the proceeding has been filed within that period, and
 - c. the date on which the Court requests that the original be filed.
24. If the Court requests that counsel file the original [Waiver Form](#), counsel must do so promptly after the request is made.
25. Upon receipt of a properly completed [Waiver Form](#), the Detention Review Coordinator will reply and confirm that the matter has been removed from the list. The Court will consider the Application concluded.

Transcripts

26. Counsel who intend to seek an order from the judge at the Scheduling Hearing for transcripts of the initial bail proceedings for the purposes of the Detention Review Hearing, should complete the online form found on the Scheduling page of the Court's website [here](#), and submit a copy by email to detention.review@bccourts.ca no later than 4:00 pm the day before the Scheduling Hearing. Submission of the form will expedite the transcript ordering process at the Scheduling Hearing.
27. Counsel who have submitted the online transcript order form must also, at the Scheduling Hearing, request that the Court order the transcripts, so that the request is a matter of record.
28. The court clerk at the Scheduling Hearing will confirm whether they have received the necessary information by way of the form.

29. If counsel are unable to submit the form they must have the following information readily available to provide on the record at the Scheduling Hearing in order to facilitate the ordering process:
- a. the relevant court file numbers and locations of the underlying proceedings;
 - b. the dates of all bail hearings to be transcribed; and
 - c. the dates of all bail decisions to be transcribed.

Technical Suitability Reports

30. Counsel who intend to seek an order from the judge at the Scheduling Hearing for a technical suitability report for the Detention Review Hearing should have all of the necessary information readily available to provide on the record at the Scheduling Hearing to facilitate the ordering process.

The Scheduling Hearing

31. The purpose of the Scheduling Hearing is to determine whether the accused person wishes a Detention Review Hearing to be held, and if they do, to schedule, or arrange to schedule, a date for a Detention Review Hearing and to discuss steps necessary for that hearing to proceed.
32. Unless the Court directs otherwise, the accused person will appear at the Scheduling Hearing by video-link from the institution where they are detained.
33. Unless the Court directs otherwise, Crown and defence counsel may appear by MS Teams video or audio using the link or dial-in information provided by the Detention Review Coordinator in the email attaching the Notice of Scheduling Hearing.
34. Unless the Court directs otherwise, defence counsel is not required to appear at the Scheduling Hearing (although they may do so if they wish), so long as, no later than 24 hours before the date and time set for the Scheduling Hearing, they provide Crown counsel with the necessary information to advance the case through the detention review process.
35. Defence counsel who have not communicated with Crown counsel as described in paragraph 34 above or have not submitted an [Adjournment Form](#) in accordance with paragraphs 18-19, are expected to appear at the Scheduling Hearing, either personally or through a properly instructed agent. A non-appearance at the Scheduling Hearing, without explanation, may result in an adjournment to the next available Scheduling Hearing date, and a direction or order of the Court that defence counsel appear or have a properly instructed agent appear and be prepared to advance the case through the detention review process.
36. The accused person is not required to appear at the Scheduling Hearing if a counsel designation notice has been filed with the Court (either a new notice or a copy of a counsel

designation notice filed at the Provincial Court), and designated counsel appears by MS Teams video or audio, on the accused person's behalf.

Fixing a Date for the Detention Review Hearing

37. If Crown and defence counsel have pre-arranged a date, location and time estimate for the Detention Review Hearing with Supreme Court Scheduling in advance of the Scheduling Hearing, then the Detention Review Hearing may be scheduled at the Scheduling Hearing.
38. If Crown and defence counsel do not make arrangements with Supreme Court Scheduling in advance, the matter will be set for a s. 525 Fix Date Appearance in the nearest Supreme Court Scheduling hub to fix a date for the Detention Review Hearing.
39. In conjunction with fixing a date for a Detention Review Hearing, the Court will generally:
 - a. ask counsel for their time estimates for a Detention Review Hearing;
 - b. specify by what means the accused person will appear at the Detention Review Hearing so that the necessary arrangements can be made;
 - c. consider what court location is the most appropriate for the Detention Review Hearing, taking into account the convenience of those who will be involved in the hearing, the availability of court facilities and staff, and other relevant circumstances;
 - d. address the issue of materials (e.g., transcripts, reasons, exhibits, etc.) that will be required at the Detention Review Hearing and, if necessary, order the materials; and
 - e. canvass whether an interpreter will be required.
40. If the Court directs that the matter be set for a subsequent Scheduling Hearing or to fix a date for a Detention Review Hearing, and defence counsel will appear on the accused person's behalf, then unless the Court directs otherwise, the accused person is not required to appear at the subsequent Scheduling Hearing or s. 525 Fix Date Appearance, but may appear by video if they indicate at the Scheduling Hearing that they so wish.

The Detention Review Hearing

41. The Detention Review Hearing will take place at the time and date and in the court location scheduled at the Scheduling Hearing or Fix Date Appearance, unless subsequently scheduled or changed in the usual manner. Court locations outside of Vancouver and New Westminster operate on the assize system; therefore, all matters are booked for the "week of" and counsel should be prepared and ready to proceed any day during that week.
42. If a judge of the Supreme Court is assigned as the trial judge or case management judge for the charges on which the accused person is detained, the Detention Review Hearing will be before that judge unless the Court directs otherwise.

43. The accused person will generally appear by video-link from the institution where they are detained, unless any of the following applies, in which case the accused person will appear in person for the Detention Review Hearing:
 - a. the accused person wishes to appear in person, or is not represented by counsel in the hearing;
 - b. oral evidence will be led in the hearing; or
 - c. the accused person will need an interpreter or other assistance that cannot reasonably be provided in the institution.
44. Unless oral evidence will be led at the hearing, the accused person is not required to appear at the Detention Review Hearing if a counsel designation notice has been filed with the Court (either a new notice or a copy of a counsel designation notice filed at the Provincial Court), and designated counsel appears personally on the accused person's behalf.
45. Crown counsel must bring a copy of the following documents to the hearing for the presiding judge:
 - a. the information(s) or indictment; and
 - b. the accused person's criminal record (if the Crown is alleging one).
46. Counsel wishing to rely on exhibits from earlier bail proceedings who did not address the matter at the Scheduling Hearing as noted above, should arrange with the court registry well in advance of the Detention Review Hearing for copies of the exhibits, or originals if necessary, to be made available to the presiding judge at the hearing.
47. Documents and materials that counsel intend to rely upon at the Detention Review Hearing must be filed in the registry where the Detention Review Hearing is to take place. Alternatively, so long as the materials are not voluminous, counsel may deliver them electronically (pdf and bookmarked where relevant according to the instructions [here](#)) to the relevant Supreme Court Scheduling email address for the location where the Detention Review Hearing is to take place. Documents should be delivered to the registry or Supreme Court Scheduling no later than 4:00 p.m., two days before the date of the Hearing.

Directions for Expediting the Proceedings

48. If the presiding judge at the Detention Review Hearing gives directions under s. 525(4)(a) for expediting the proceedings relating to the charges in the Application, the court clerk will

cause a *Direction Under s. 525(4) of the Criminal Code* to be generated recording the directions made.

49. If a *Direction* is signed by the presiding judge, or in their absence, another judge of the Court, the court clerk will cause the *Direction* to be filed and will send a copy of the filed *Direction* by email to the Detention Review Coordinator.
50. In cases where the trial will be in the Provincial Court, the Detention Review Coordinator will provide a copy of the *Direction* to the Office of the Chief Judge, to the attention of the Associate Chief Judge, and will also provide a copy to Crown and defence counsel.
51. In cases where the trial will be in the Supreme Court, the Detention Review Coordinator will provide a copy of the *Direction* to the Chief Justice, Associate Chief Justice or their designate, and will also provide a copy to Crown and defence counsel.

Requirement for a Further Detention Review Hearing

52. If the presiding judge at the Detention Review Hearing requires a further Detention Review Hearing within 90 days or any other period as provided for in s. 525(4)(b), the court clerk will cause a *Direction Under s. 525(4) of the Criminal Code* to be generated, recording the direction made.
53. If a *Direction* is signed by the presiding judge, or in their absence, another judge of the Court, the court clerk will cause the *Direction* to be filed and will send a copy of the filed *Direction* by email to the Detention Review Coordinator.
54. The Detention Review Coordinator will prepare and deliver a Notice of Scheduling Hearing to Crown and defence counsel, with a copy to Corrections, for a Scheduling Hearing approximately seven (7) days in advance of the date specified by the judge who made the direction for a further Detention Review Hearing.
55. The further Detention Review Hearing will be scheduled at the Scheduling Hearing.

Heather J. Holmes
Associate Chief Justice

Appendix A – Application to end the detention review process due to ineligibility

Vancouver Registry
No. VA [redacted] W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

v.

[redacted] (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

APPLICATION TO END THE S. 525 DETENTION REVIEW PROCESS DUE TO INELIGIBILITY

An Application dated [redacted] has been made in relation to the Accused
[redacted] (name of accused) for a detention review
under s. 525 of the *Criminal Code*.

STATEMENT OF COUNSEL

I [redacted] am counsel for (the accused / Crown). I am informed and believe that (choose one):

- the accused person has been released from custody;
- the accused person has entered a guilty plea in relation to all of the charges that are the subject of the Application, or all of those charges have otherwise been disposed of;
- the accused person has been sentenced in relation to all of the charges that are the subject of the Application; or
- the trial of the accused person in relation to all of the charges that are the subject of the Application has commenced.

On the basis of this information, I confirm that the accused is ineligible for a detention review hearing under s. 525. I make this statement in support of my request to end the detention review process initiated by the Application.

- (If Crown counsel) I confirm I have consulted with defence counsel and defence counsel agrees that the accused is ineligible for a detention review hearing under s. 525 on the basis indicated above.

[redacted]

Counsel Signature (can be typed)

[redacted]

Date

ORDER

Upon receipt of the application of counsel for (the accused / Crown), and upon reading the Statement of Counsel;

THIS COURT ORDERS AND DECLARES that:

1. the accused is ineligible for a detention review under s. 525 of the *Criminal Code*; and
2. the detention review process in relation to the Application is concluded.

Dated [redacted] at [redacted], British Columbia

[redacted]

A Judge of the Court

Appendix B – Adjournment Form

Vancouver Registry

No. VA _____ W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

v.

_____ (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

ADJOURNMENT FORM

ADJOURNMENT

On behalf of the accused, I request that the Scheduling Hearing be adjourned to _____.
(Insert date. Maximum allowable adjournment is 45 days. Scheduling Hearings currently take place each week **only on Tuesdays.**)

Counsel will appear on that date (by a mode of appearance authorized by CPD-4).

The accused:

- will appear by video-link.
- will not appear at the Scheduling Hearing.

The adjournment is requested for the following reasons:

- I have requested relevant material from the registry, including transcripts, reasons or exhibits from prior bail hearings, but have not yet, or have only recently received it.
- The accused has not yet had an opportunity to obtain legal advice regarding whether to proceed with the s. 525 detention review.
- Other (explain) _____

Counsel Name (print): _____

Counsel Signature: _____

Date: _____

Appendix C – Waiver Form

Vancouver Registry

No. VA _____ W

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Rex

v.

_____ (Accused)

CRIMINAL CODE, SECTION 525 - DETENTION REVIEW

WAIVER FORM

WAIVER

The accused _____ (*print name of accused person*) understands that they are entitled to have their continuing detention in custody reviewed by a Justice of the Supreme Court of British Columbia; they are entitled to be personally present when the Court conducts the review; and by instructing counsel to deliver a waiver they are giving up their right to have their continuing detention in custody reviewed under s. 525 of the *Criminal Code* for this application.

I, _____ (*print name of counsel for accused*) confirm that I am counsel for the accused. I confirm that I have reviewed the relevant information and material regarding the circumstances of the accused's present detention. I further confirm that I have provided advice to the accused regarding their right to a detention review under s. 525 of the *Criminal Code*, including the nature of the right and consequences of a waiver, and the accused waives that right for this application.

Counsel Name (print): _____

Counsel Signature: _____

Date: _____