



**SUPERIOR COURT OF QUEBEC
CRIMINAL CHAMBER**

January 8th, 2019

NOTICE TO MEMBERS OF THE BAR

**DIRECTIVE CR/2019-02 CONCERNING THE PREPARATORY STAGES
BEFORE TRIAL**

This Directive applies to all jury trials before the Superior Court of Quebec, unless otherwise decided by a judge.

The Pillars

1. At the latest three (3) working days before the first appearance of the accused before the Superior Court, the Prosecution must file in the court record and communicate to the Defence the following six pillars :

- the indictment;
- the summary of facts;
- the list of witnesses;
- the list of admissions sought;
- the inventory of judicial authorizations; and
- a document that indicates the estimated *Jordan*¹ date, taking into account the renunciations of the Defence.

Application by an Indigent Accused for State-Funded Counsel

2. Sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* guarantee the right of an accused to the assistance of state-funded counsel, where the accused is able to demonstrate that they are indigent and that the assistance of counsel is essential to ensure the fairness of the trial. This situation may arise if the accused has been declared ineligible

¹ *R. v. Jordan*, [2016 SCC 27](#).

for legal aid, or if the legal aid system is inadequate in light of their particular situation. The accused must present their application for state-funded counsel at the earliest opportunity.

The Pre-Hearing Conference

3. As provided by section 625.1(2) of the *Criminal Code*, in any case to be tried with a jury, the court, before the trial, orders the holding of a pre-hearing conference in order to discuss matters that would promote a fair and expeditious trial.

4. The pre-hearing conference is presided over by a judge of the Superior Court and held in accordance with the *Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, 2002*, [SI/2002-46](#) (hereafter, *Rules of Practice*). The judge who presides over the pre-hearing conference decides, in particular, whether written submissions supported by case law are to be submitted on the motions or points of law that the parties intend to raise.

5. It is possible that more than one pre-hearing conference be held in the same file.

Form CR/2019-02: Joint Pre-Hearing Conference Form

6. Unless a judge decides otherwise, the original of [Form CR/2019-02](#) (signed by the lawyers and the accused) must be filed in the court record by the Prosecution at the latest one (1) month after the first appearance before the Superior Court. The form must also be sent by e-mail to the Office of the Coordinator of the Criminal Chamber, at one of the following addresses: ch.crim.csq.mtl@judex.qc.ca (Montreal Division) or ch.crim.csq.qc@judex.qc.ca (Quebec Division). The Prosecution must indicate in the subject line of the e-mail: “*Pre-Hearing Conference – Form CR/2019-02 – File No – Name of accused*”. In joint trials, a form must be prepared for each accused.

7. Form CR/2019-02 must be completed jointly by the parties. The parties are required to complete the form in a thoughtful, detailed and thorough manner.

8. Form CR/2019-02 constitutes an undertaking before the Court. As such, while the information communicated and the positions adopted at the pre-hearing conference are not legally binding on the parties, where a party adopts a position that is contrary to what is stated in the form, a judge may consider their initial position in an eventual decision.

9. Form CR/2019-02 may be modified at any time in order to take into account new jurisprudence or a legislative change, or for any other reason, subject to the issue of a notice to the members of the bar.

Presence of the Accused at the Pre-Hearing Conference

10. In the Montreal Division, an accused who is represented is not required to be present during the pre-hearing conference. The judge may, however, require their presence. In the Quebec Division, the accused is required to be present, unless a judge decides otherwise.

11. If the accused is detained, an order to bring them before the Court will be issued at the request of either of the parties.

Pre-Hearing Conference by Audioconference or Videoconference

12. With the permission of the judge presiding over the pre-hearing conference, the conference may be held by audioconference (in those cases where the accused is represented by a lawyer) or by videoconference. Save for some exceptions, the substance of the conference is recorded in accordance with section 646 of the *Criminal Code*. In all cases, minutes must be drawn up by a court clerk.

Publication Ban

13. In accordance with section 40 of the *Rules of Practice*, the pre-hearing conference is the subject of a publication ban.

14. In the spirit of section 40, and in order to ensure that it fulfills its purpose, the pillars and Form CR/2019-02 are also the subject of a publication ban.

Unrepresented Accused

15. This Directive also applies to unrepresented accused, unless otherwise decided by a judge. As such, unrepresented accused are required to complete Form CR/2019-02.

16. All participants in the justice system have the responsibility of understanding and fulfilling their roles to ensure the fairness of proceedings. Because unrepresented accused encounter particular challenges, judges and counsel for the Prosecution² have the responsibility of ensuring that unrepresented accused can understand and effectively present their case.

² *Code of Professional Conduct of Lawyers*, [CQLR, c. B-1, r. 3.1](#), s. 112: “When acting as prosecutor in a criminal or penal matter, the lawyer must act in the public interest and in the interest of the administration of justice and the fairness of the judicial process”.

17. Judges, in particular, have the responsibility of ensuring that the rules of procedure and evidence do not serve to unjustly prejudice the legal interests of the accused. When appropriate, judges must provide unrepresented accused with information to help them understand and exercise their rights. Judges do not, however, offer legal advice.

18. In this regard, all the parties should consult the [*Statement of Principles on Self-represented Litigants and Accused Persons*](#) published by the Canadian Judicial Council.

19. An accused who represents themselves has the responsibility to familiarise themselves with the relevant legal practices and the judicial procedure relating to their case. They must prepare their own case and respect the judicial process and court personnel.

20. The accused who is unsure of their rights and obligations and who wants to obtain general information about the judicial process should consult the document entitled [*REPRESENTING YOURSELF IN COURT in Criminal and Penal Matters*](#) published by the Fondation du Barreau du Québec and/or contact their local [Community Justice Center](#).

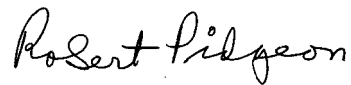
Coming Into Force

21. This Directive comes into force on January 8th, 2019.

22. For cases in progress at the time of the coming into force of this Directive, the Office of the Coordinator of the Criminal Chamber will decide, taking into account the state of the file, if it is necessary for the parties to complete Form CR/2019-02. In such cases, the parties will be informed either at their next court appearance, or by e-mail.



Jacques R. Fournier
Chief Justice of the Superior Court of Quebec



Robert Pidgeon
Associate Chief Justice