



## NUNAVUT COURT OF JUSTICE

### PRACTICE DIRECTIVE #7

#### Procedural Requirements for the Filing of 11(b) Delay Applications

The Supreme Court of Canada established a new framework for the consideration of 11b delay applications under the *Charter*. The purpose of this Practice Direction is to ensure that s. 11(b) applications before the Nunavut Court of Justice are scheduled and conducted in a fair and effective manner by (i) clarifying what supporting materials are required for s. 11(b) applications; and, (ii) requiring all s. 11(b) applications be heard well in advance of the trial.

The Directive requires that applications be scheduled 60 days in advance of the trial date to ensure that the issue of delay is determined in advance of the filing of other pre-trial applications. Further, in the event the application is successful, in sufficient time to allow the time set for the trial to be reallocated. In the event the application is denied, the time will allow for the case to proceed on the scheduled trial date; particularly this will ensure the jury trial process is not impacted.

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Unless otherwise ordered by a Judge, applications for a stay of proceedings under section 11(b) of the Charter must comply with the timelines and filing requirements as set out in this Directive.

#### ***Required Timelines and for Filing Application and Supporting Materials***

1. An application must be heard at least 60 days before the first scheduled day of a trial or, where pre-trial applications are scheduled in advance of a trial, at least 60 days before the first scheduled day of pre-trial applications.
2. The Application must comply with the form and content requirements of Practice Directive 39 including setting out the grounds, documentary evidence and law to be to be relied upon at the application hearing.

3. In order to ensure the matter can be scheduled, the applicant must consult with the NCJ Trial Coordinator and determine the availability of special criminal chambers date that meets the timeline above in compliance with Practice Directive 33. The applicant is expected to consult with the Crown and the counsel for any co-accused available dates.
4. The Applicant's supporting materials must be filed at least 30 days before the hearing of the application.
5. The Respondent's materials must be filed at least 10 days before the hearing of the application.

***Required supporting Materials Required on s. 11(b) Applications***

7. Each party to the Application are required to file factums that clearly identify any periods within the case that are attributable to the defence or to "exceptional circumstances", as defined in *R. v. Jordan*. Such factums should also clearly set out the party's argument as to how they submit the delay should be attributed.
8. In addition, in transitional cases, (*i.e.* cases with a charge date before July 8, 2016), the factum should clearly attribute each period of time in the proceeding to one of the five categories of delay identified in *R. v. Morin* ((i) inherent time requirements; (ii) delay attributable to the accused/defence; (iii) Crown delay; (iv) institutional delay and (v) other reasons for delay).
9. Where possible, the parties should submit an agreed statement of facts that the identifies any periods of delay within the case that all parties agree are attributable to the defence or to "exceptional circumstances defence or to "exceptional circumstances", as defined in *R. v. Jordan*, or (in transitional cases) to one of the five categories of delay identified in *R. v. Morin* ((i) inherent time requirements; (ii) delay attributable to the accused/defence; (iii) Crown delay; (iv) institutional delay and (v) other reasons for delay).
10. The applicant's must file an application record that must contain the transcripts of all prior court appearances in the case. Where an appearance included the hearing of evidence and submissions, only the portion of the transcript reflecting discussions about adjournments, scheduling and selection of the next court need be provided. Where the parties have agreed on the facts relating to the delay and filed an agreed statement of facts regarding same, the transcripts for those appearances are not required.

***Pre-Trial Conferences***

11. Upon the filing of an 11(b) Application, the NCJ Trial Coordinator may schedule a pre-trial conference with all of the parties. The pre-trial conference judge will

inquire about and discuss any matter that may promote a fair and expeditious hearing of the s. 11(b) application including, but not limited to:

- (i) the scheduling of the application;
- (ii) the parties' positions as to the cause of any particular periods of delay in the case, including whether the delay is attributable to the defence or to "extraordinary circumstances", as defined in *R. v. Jordan*, and
- (iii) the materials required to be filed in support of the application.

This Practice Directive comes into effect immediately.

DATED at the City of Iqaluit, Nunavut, this 25<sup>th</sup> day of November 2016.

Mr. Justice N. Sharkey

Madame Justice S. Cooper

Madame Justice B. Tulloch

Mr. Justice P. Bychok