

8.1.4

May 24, 2013

Commissioner Micki Ruth
Chair Board of Police Commissioners

Dear Ms. Ruth:

RE: Justice Efficiencies for Police

Further to your meeting on Monday, May 13, 2013, I have let Josh Judah, Senior Prosecutor, know that he should be prepared to attend future meetings of the Commission to update the Commission on his efforts to work with other justice partners to achieve efficiencies for police, including efforts to have evidence certificates accepted by the courts relieving officers of the necessity to appear.

Josh has prepared a written report for your information, a copy of which is attached. Should the Commission have questions regarding his written report, Mr. Judah would attend a meeting at your convenience. You may wish to have him update the Commission in 6-12 months as to his progress.

At a later time, if Josh is unable to make any progress, it may be useful for the Commission to write to the Minister of Justice and the Nova Scotia Barristers' Society to ask for their support. An estimate of the amount of time and cost would be helpful if the Commission were to seek the support of others.

I hope these comments are helpful.

Yours very truly,

HALIFAX REGIONAL MUNICIPALITY
Original Signed

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MFHT/rb

c: Josh Judah
Marty Ward

Project Name:	Reduce The Need For Police Officers To Appear In Court On Municipal Matters	
Prepared by:	Josh Judah	
Date:	May 14, 2013	Responsibility
Status Report:	<p>There are three aspects to this project:</p> <ol style="list-style-type: none"> 1. Adjournment of Trials; 2. Justices of the Peace Refusing To Hear Matters; and 3. Evidence Certificates. <p><u>1. Adjournment of Trials</u></p> <p>When a trial is adjourned without warning, whether it be in Day or Night Court, the Crown cannot call off Officers early enough to save the cost of paying them to attend Court. There are five circumstances that cause the majority of unexpected adjournments.</p> <p>A) Lack of Disclosure of the Crown's File</p> <p>The Defendants in all matters, whether they are in day or night court, have the right to disclosure of the case against them. The onus is on the Defendant to make a request for disclosure. That being said, Courts are usually reluctant to proceed with a Trial when the defendant wants disclosure but has yet to receive it. The common circumstance is that the individual fails to request disclosure early enough for it to be provided in a timely manner. Quite often the disclosure request is made in the form of an Adjournment request just prior to Trial. There are some individuals who do this as a tactical move in order to delay the Trial.</p> <p>In order to mitigate this problem we have put three procedures in place. First of all, with any of the larger files for which we already have a full file and have proceeded by way of a long form information, we have the disclosure package ready for the Arraignment. The Defendant receives disclosure long before trial and does not have the opportunity to use that as an excuse to delay the matter.</p> <p>Second, in the case of Day Court Trials, we do not prepare the disclosure</p>	

package prior to the Arraignment. We often have not received the investigative file prior to the Arraignment. When the charge is laid by way of a Summary Offence Ticket, the Defendant is not compelled to attend Court. Many do not attend and are convicted in their absence. In these cases it would be a waste of resources to prepare a package. The procedure we follow when a Defendant does appear for Arraignment and requests a Trial Date is to confirm their address and then mail them the disclosure. We state on the Court record that we will mail the disclosure and to contact us if they do not receive it. In this way we are on solid ground to object to an Adjournment request at Trial. The practice has been very successful and resulted in a virtual elimination of Adjournments for this reason.

Third, in regard to Night Court files, it is impractical for us to prepare the disclosure package early in the process. The vast majority of Defendants either pay the ticket or are convicted in their absence by the Court. Disclosure is not required in these cases. Of the matters that are set for Trial, about 20% request Disclosure. Of the matters that appear for Trial and do not have Disclosure, very few request an adjournment in order to obtain disclosure. Only one or two per week. The change that we were able to make to help deal with this problem was with the "Notice of Intention to Appear in Court" form. This form is filled out by Defendants who are seeking a Trial date. We added:

You are entitled to request disclosure concerning the circumstances of your offence from the Crown. You may contact the Court for the address of the local Crown office.

The Form provides clear notice to the Defendants of their right to request and receive disclosure of the Crown's case. Defendants are no longer able to state that they were unaware of the right. This approach is not completely effective, but has reduced the need for adjournments for this reason.

B) Witness Subpoenas

There are two basic ways that witness subpoenas can cause a Trial to be adjourned on short notice. First of all, at times civilian witnesses are issued subpoenas very close to the Trial date and they are unable to attend. Sometimes this happens so close to the Trial date that we are not able to call off our Officers. The HRP, however, take care of the issuance of witness

subpoenas, so this is completely within their control.

Second, on occasion, required witnesses fail to appear for trial and the matter is either adjourned or dropped. We have little ability to control this problem.

C) Adjournment Requests For Legitimate Reasons

Over the years we've had the continuing problem of Defendants, or their representatives, appearing on the Trial date and requesting an adjournment of the matter. These requests were for a variety of reasons. One of the common ones was that the person worked shift work and had just received their schedule for the month. The problem for us was that the Officer was present and being paid. A number of these cases were the result of Court Staff informing people they need only appear on the Trial date to make the request. For about three years we have been proactively encouraging Defendants who would like an adjournment to have their matter placed on the docket at least a couple of days before the Trial date. That way, if the adjournment is granted, we have time to call off our witnesses. We convey this message at all times we are in communication with Defendants and have worked with Court Administrative staff so they provide the same message to Defendants. We also include this information on the Prosecution information telephone line.

D) File Assessment

Phyllis continues to be proactive in her review of files. Particularly in complex matters, such as accident files, there are usually many Officers under subpoena. Phyllis finds that quite often not all of these witnesses are required, so she calls them off well in advance of trial. She reports that in about 30% of complex files she is able to call off at least one Officer. In addition, both the HRP Court Office and Phyllis look as less complex files in an attempt to reduce the number of Officers who are called to Court. On occasion they are able to do so.

E) No Insurance Trials

The majority of defendants charged with driving without insurance are not guilty of the offence. The problem is that they were not carrying proof of

insurance with them in the car. We have worked with Court Administration to attempt to resolve these matters before the reach Trial. There are a few cases, however, that make it as far as Trial, only to be adjourned in order to give the Defendants time to prove they have insurance. In these cases an Officer has attended Court but the Trial does not proceed. Typically, the matter is adjourned to a Hearing To Set Trial Date a couple of weeks later. If the insurance is confirmed, we withdraw the charge. If the insurance is not confirmed the matter is re-set for Trial.

Once the HRP takes over the assessment of insurance documentation, which is currently being handled by Court Administration, we anticipate a tightening of the process so fewer matters will make it as far as Trial when the defendant is actually not guilty.

2. Justices of the Peace Refusing To Hear Matters

Night Court Adjudicator McIntyre expressed concerns about hearing several cases on the same evening that involve the same Officer. Of course, the position of HRM Legal and the HRP is the same. We both want multiple cases for the same Officer to be heard on the same evening. It is easier to schedule and obviously more efficient.

I have spoken with our night court prosecutors and they report that, even though the issue has been raised, it has not yet become a real problem. Mr. McIntyre raised it, but has not ordered the Crown or the Court to change their scheduling practice. In addition, one of the per diem adjudicators also raised this issue and attempted to adjourn three trials. Both the Crown and the Defendants objected to the adjournment and the trials proceeded as scheduled. It appears that even the defendants recognize that the adjournment would have been a waste of time.

As you are aware, Her Honour Pamela Williams has recently been appointed Chief Judge of the Provincial Court. I am currently attempting to set up a meeting with her. I want to discuss Evidence Certificates, but also plan to take the opportunity to generally discuss court efficiency with her. I do not, however, want to specifically raise the issue of multiple trials with the same officer at this time. If I were to raise the issue, I think the first thing Judge Williams would do is communicate with her Adjudicators. When asked the question, even those who are not currently concerned about the practice will likely say they would prefer not to see the same officer too often. Others will say they feel the process appears "tainted"

and that the scheduling should be altered. My guess is that once the issue is formally raised, the Adjudicators will all get on the same page and Judge Williams may direct Court Administration to stop scheduling Officers for multiple trials on the same evening. We would then be in a position to lobby for a change, but would be at their mercy.

On the other hand, things may stay the way they are now and we won't have a problem. Also, I am hoping to build an on-going dialogue with the Bench (as we already have with Court Admin) in regard to court efficiency. I see evidence certificates, Officers appearing for multiple trials, the changes we have already made to the court procedure, and future projects, as all part of the big picture of court efficiency. If and when Judge Williams buys into the need for greater efficiency and more aggressive strategies to achieve it, I think we will be in better shape on all fronts. I think that if the situation does take a turn for the worst and an Adjudicator does either adjourn or dismiss a charge because they don't want to hear from the same Officer again, we will be in a position to appeal to the Supreme Court. If, on the other hand, Court Admin simply refuses to schedule multiple trials, we won't be in a position to appeal to a higher court.

Overall, I think we should stay down in the weeds as best we can, try to build an understanding with the new Chief Judge on the general issue, and be ready to appeal if the Adjudicators start dismissing cases for this reason.

I communicated this position to Deputy MacNeil on March 25th, 2013.

3. Evidence Certificates

The proposed legislation has been drafted and the Provincial Department of Justice has been brought on side.

The British Columbia experiment with Evidence Certificates serves as a guide for our Project. The two major problems they faced were a lack of support from their Judiciary and a lack of support from their Prosecution Appeal Division. Since we handle our own appeals, we don't have to worry about their second problem.

The two challenges we currently face are gaining the support from the Judiciary of Nova Scotia and in gaining a "champion" for the project within the Nova Scotia Department of Justice.

About a year ago I was ready to attempt to lobby our Judiciary. I was advised by the Nova Scotia Department of Justice that it would be best if they initiated this contact. After several months it appeared to me that they had not made any progress. I then took it upon myself to write to Chief Judge Curran of the Provincial Court and request a meeting with him. I did not receive a reply. Pamela Williams has recently taken over the Office of Chief Judge of the Provincial Court. I wrote to her on March 28, 2013, and received a reply on April 24, 2013. She wrote, "I intend to raise the issue, outlined in your correspondence, with both the Bench and the Justices of the Peace during the course of meetings in the month of May 2013. Once I have had the opportunity to seek input I will respond to your inquiries."

Further, in an attempt to gain some momentum within the Nova Scotia Department of Justice, I have discussed the project with Peter James, the recently appointed Director of Court Services. He has expressed his support for the Project as a good method to increase the efficiency of the Night Court. Mr. James recognizes that shortening the time required from some Motor Vehicle prosecutions will save both the Crown and the Court money. We are scheduled to meet on May 23, 2013.