

BARBADOS SUPREME COURT

Practice Direction No. 2 of 2020

FIXED DATES FOR CRIMINAL CASES

INTRODUCTION

For some time now, the High Court, Criminal Division, has been experiencing difficulty in disposing of its criminal list due in large part to the significant number of ineffective trial fixtures. This has resulted in a substantial backlog. Several proposed measures, including, for example, the Plea and Directions Hearings have proven ineffective, not because of any inherent defect in the proposed measure but because of a basic failure of compliance. It is now necessary to introduce a new system. The following directions are intended to remedy this problem.

2. OBJECTIVE

The objective is to reduce the delay, increase the speed of access to justice for complainants, defendants and other users of the Criminal Justice System, eliminate the backlog, establish a degree of certainty and predictability for listings, foster and restore the public confidence in the system, provide for good management in the delivery of justice and to lead eventually to a general attainment of trials within three months of indictment or first arraignment or six months at the latest.

3. FIXED AND WARNED CASES

- 3.1. Fixed and warned cases shall be the basis of the system. Cases may be fixed or warned for trials to commence on a specific date and for a specific period.
- 3.2. Fixed cases or fixed trial dates mean exactly that. Once a date is fixed the trial is expected to proceed on that date and may only be adjourned for exceptional reasons such as serious illness or death.

- 3.3. Warned cases are warned for the same dates as fixed cases and are bound by the same principles. Counsel and Defendants are expected to be prepared and ready to proceed to trial on those dates if the fixed cases do not proceed for any reason. They will not be adjourned unless for very good reason.

4. SUPERVISING JUDGE

- 4.1. There shall be a Supervising Judge (SJ) of the Criminal Division whose duties shall include presiding over the monthly arraignment meeting with the Director of Public Prosecution (DPP), the Registrar of the Supreme Court (Registrar), the Director of Community Legal Services (DCLS) and a Counsel nominated by the Barbados Bar Association (BBA), for the purpose of settlement of the Arraignment List and Criminal Calendar.
- 4.2. The SJ may substitute or include such other persons or officers at the Arraignment meeting as he considers fit.
- 4.3. He or his nominee shall preside over the monthly Arraignment Court, hear pleas and issue such Orders and Directions as are necessary for the efficient management of the system.
- 4.4. He shall be at liberty to assign cases to any Criminal Court for the efficient management of the system.

5. ARRAIGNMENT LIST

- 5.1. The DPP shall cause to be prepared a monthly Arraignment List in the form appended, Listing in sequence all the new indictments to be arraigned on Arraignment Day, together with all the indictments for mention and directions. [See Appendix A]
- 5.2. The list shall be set out in a form indicating the indictment number, defendant, offence, counsel and remarks.

6. THE CALENDAR

- 6.1. The DPP shall cause to be prepared monthly, an updated Calendar in the form appended, for each court, scheduling all indictments to be tried. It shall be formulated in a grid form, consisting in the headings, the week, indictment number, defendants name and status, offence, counsel and remarks. [See Appendix B]

- 6.2. The Calendar shall sequentially list every working week of the year by number and by date commencing with the first working day of the week.
- 6.3. The indictments shall be listed per week or weeks according to their expected length of trial time.
- 6.4. One fixed case shall be listed per time slot per court for the specific time it is expected to last.
- 6.5. Each fixed case may be followed in the same listing period by up to two warned cases.
- 6.6. Warned cases shall be on standby to proceed at any time within the listed period. If a fixed case collapses or does not proceed for any reason, the warned case is expected to proceed. If the warned case also collapses or does not proceed, then the next warned case follows.
- 6.7. If, for example, the cases fixed and warned are unable to proceed in Court No. 2 leaving that court with some vacant time, and the fixed or warned cases in Court No. 3 are ready to proceed, then the other warned case or cases in Court No. 3 may be transferred to Court No. 2 to proceed to trial during the period.
- 6.8. If the warned or other case takes longer in Court No. 2 or in both No. 2 and No. 3, and the two warned cases cannot be heard, then the warned cases will be relisted at another date as required.
- 6.9. Cases will be fixed or warned in a manner as to avoid clashes of counsel with court scheduling in different courts. For example, a counsel with cases fixed or warned in Court No. 2 will not simultaneously have a fixed or warned case in Court No. 3.
- 6.10. Cases may be given two or more dates in the Calendar. For example, a case may be fixed for trial in week 12, but it may also be scheduled as a warned case in week 3. Therefore, if the week 3 fixed case does not proceed, then that warned case may proceed in week 3 thus vacating the fixed date in week 12 so that another matter may be subsequently fixed for that date.

- 6.11. Warned dates shall generally precede fixed dates so as to give the defendant an opportunity for an earlier trial if the opportunity arises before his fixed date. However warned dates may also be post fixed dates where for example the fixed date, for any reason, is lost or vacated.
- 6.12. Defendants and their counsel must always endeavor to keep their dates. A defendant who fails to keep his date, particularly his fixed date, may be sent to the back of the Calendar and may expose his liberty to jeopardy, if it is found that his delay is deliberate, a wastage of court time, due to forum shopping, or is otherwise without reasonable cause.
- 6.13. Counsel are reminded not only of their duty to their clients but also their duty to their profession and to the court.
- 6.14. The system shall be serviced by a Principal Crown Counsel (PCC) assigned to each court together with her-his team of prosecutors. The PCC and her-his team in Court No. 2, for example, shall be responsible for all the cases set in that court. Therefore they must always be ready. Likewise with the prosecution teams in the other courts.
- 6.15. Prosecution and defence counsel must however be always ready for transfer from one court to another when required as outlined above in paragraph 6.7.

7. ARRAIGNMENT COURT DAY

- 7.1. There shall be a monthly Arraignment Day, conducted on the first working day of every month and presided over by the SJ or his nominee judge. All new indictments for the period shall be arraigned, trial and warned days shall be fixed, matters for mention shall be heard, and such orders and directions as appropriate for the good management of the system shall be made.
- 7.2. Counsel, Defendants and Prosecutors should endeavor to agree trial dates for trials to be heard within three months but not later than six months of indictment or first arraignment.

- 7.3. Counsel, Defendants and Prosecutors should endeavor to agree such trial dates prior to Arraignment Day so that such dates can be included in the Arraignment List and the Calendar.
- 7.4. Where Counsel, Defendants and Prosecutors fail to agree trial dates the court in last resort shall fix such dates after hearing submissions and such dates shall be binding.

8. SENTENCING DAYS

- 8.1. Sentencings shall generally be held on the last Friday of every month or such other days as ordered by the SJ or any other judge. Family members of the victims (in cases of homicide), virtual complainants and of defendants shall be notified by the clerk of each judge of the date of sentencing in that judge's court.
- 8.2. Sentencings shall be listed in half an hour sessions throughout the day or at such other intervals as the judge may order. This should result in a reduction of wasted time awaiting the call of any case.
- 8.3. On the date of conviction, defendants and or their counsel should seek court orders for such reports for sentencing as they may desire and the prosecutor shall seek such court orders for victim impact statements or other reports as he may consider appropriate. Virtual complainants and the family of victims of homicide shall, if they notify the Court of their desire, file a written victim impact statement either separately or included in the pre-sentence report prepared by the Probation Department.
- 8.4. The court shall fix the sentencing date on a day that reasonably accommodates the required reports.
- 8.5. The Chief Probation Officer shall provide a presentence report to counsel and the court not less than three days before sentencing day and not more than six weeks after it had been ordered.
- 8.6. The report shall be entered into the court record and it shall not be necessary for the probation officer to read out the report in court but, unless otherwise ordered, the officer shall be present and available for questioning if necessary.

9. ARRAIGNMENT DATES

- 9.1. The Registrar shall cause to be published annually, in the month of December, a list of all Arraignment Dates for the ensuing year. Such dates shall represent the first working day of each month and or such other dates as may be directed by the Chief Justice (CJ) or SJ.
- 9.2. Such dates shall be represented in the Calendar.

10. JURY PANEL DATES

The Registrar shall cause to be published annually, in the month of December, all dates for the change of the Jury Panels for the following year and those dates shall be represented in the Calendar.

11. WEEKLY LIST

- 11.1. The Registrar shall cause to be published, by the last working day of every week, a weekly list of all matters to be heard by each judge in the Criminal Division during the approaching week.
- 11.2. Such lists shall include, the indictment number, case name, counsel, and day, date and time of trial, hearing or mention.

12. PUBLICATION OF THE ARRAIGNMENT LIST AND CALENDAR

The DPP shall cause the Arraignment List and Calendar to be ready and transmitted to the CJ, SJ and Registrar at least five working days prior to the Arraignment Day, and the Registrar shall cause both documents to be published on the courts notice boards, websites, to the BBA, prisons and other stakeholders and by the media for public notice at least three working days prior to Arraignment Day so as to give interested parties reasonable notice and time to attend Arraignment Day.

13. COORDINATING OFFICERS/CASE MANAGERS

- 13.1. The Registrar shall designate an officer for the coordination of all information on the Weekly List and to communicate that information with a Coordinating Officer whom the DPP may designate for the purpose of effecting the said List, the Arraignment List and the Calendar.

- 13.2. In addition such officers shall communicate with the prosecutors, counsel, probation officers, community legal services and other stakeholders for the agreement of trial dates, and provision of reports in a timely manner.

14. COURT CLERK DUTY

It shall be the duty of each clerk of each court to daily communicate the Orders of the Court to the Courts Coordination Officer for inclusion in the Weekly List, Arraignment List and the Calendar.

15. CASE MANAGEMENT MENTIONS

- 15.1. All Criminal Courts shall be available daily to hear mentions during the morning break between 11 and 11:30 a.m. (see, paragraph 18.2) for the management of cases.
- 15.2. Counsel are always at liberty to have their cases listed for mention at these times, to hear short case management issues and the presiding judge may make such Orders as are necessary, including Orders for disclosure, reports, trial dates, legal aid certification and adjournments.
- 15.3. Once a case is listed in the Calendar of a judge, it shall be the duty of that judge to case manage all the cases listed in her-his court's Calendar by listing them for mention from time to time prior to the fixed and warned dates to ensure compliance with orders and to ensure the case is ready for trial at a reasonable time before the trial dates.
- 15.4. The judge shall, at a reasonable time prior to the trial dates, obtain a commitment of readiness from counsel, the defendant and prosecutor. Once that commitment of readiness is given it shall be binding on counsel, the defendant and the prosecution.
- 15.5. Trial dates, whether fixed or warned shall not be adjourned nor vacated because of the change of counsel. Counsel should only enter appearance where there is an existing fixture if they are able to honour it.

16. GUILTY PLEAS

- 16.1. Counsel and defendants who desire to enter guilty pleas or seek Maximum Sentence Indications (MSIs) shall do so at least 30 days prior to a fixed or warned trial date so as to allow for the fixing of other matters in the vacant time-slots.
- 16.2. Counsel are reminded of the MSI Practice Direction. The court may, in its discretion, refuse to grant a late application for an MSI, particularly on a trial date.

17. CASE LOG

- 17.1. Each court clerk shall insert in the front cover of each indictment file, a case log in the form appended. It shall be headed with the indictment number, case name, name of the prosecutor, defence counsel and statement of the offence. [See Appendix C]
- 17.2. In its left margin shall be provision for the date, time and initials of the judge of each hearing and to the right of the page shall be provision for the judge's notes.
- 17.3. Every judge who presides over any hearing of the case shall make a record on the case log of the date and time of the hearing, his initials, a brief note of the issues or facts raised and his Orders or Directions.
- 17.4. This log shall represent a history of the case management and shall be available to every judge or other interested party for the good management of the case.

18. COURT SITTING TIMES

- 18.1. Each Criminal Court shall commence sitting daily at 9:30 a.m. unless otherwise ordered by the judge.
- 18.2. There shall be a morning break at 11 am to 11:30 a.m., during which time the Court may hear short mentions.
- 18.3. Court shall resume sitting from 11:30 a.m. to 1:00 p.m., when it shall break for lunch.

- 18.4. Court shall resume at 2:00 p.m. and sit until 3:30 pm, then adjourn for the day, except when the jury is in deliberation when it shall adjourn at a time ordered by the judge, or if the judge otherwise orders.
- 18.5. These times should result in an effective trial time of 1½ hours per session to accommodate the CAT officers, jury and other parties.
- 18.6. Where there are any conflicts between fixtures before the High Court, Criminal Division and any other court, the Criminal Division fixture shall take precedence unless otherwise ordered by a Justice of Appeal.

19. TRANSCRIPTS

CAT Officers shall endeavour to deliver transcripts of the day's hearing in a timely manner.

20. COMPLIANCE

Compliance with these Directions should result in efficient management of precious court time so that the court plant is never idle. It should achieve elimination of the backlog, delivery of justice within a reasonable time, as well as the establishment and maintenance of an efficient system once the backlog is eliminated. The efficiency and effectiveness of the system should impact and contribute to the reduction of serious crime by providing for speedy trials, putting offenders on notice that their matters shall be quickly processed, and substantially contributing to the restoration of the public's confidence in the Criminal Justice System.

21. EFFECTIVE DATE

This Practice Direction shall come into effect on the 7th day of February 2020.

Dated this 7th day of February 2020.



Marston C.D. Gibson
Chief Justice

APPENDIX B

HIGH COURT OF BARBADOS

CRIMINAL CASES CALENDAR 2020

WEEK	COURT NO. 2					COURT NO. 3				
	IND.#	CASE NAME	S	COUNSEL	REMARKS	IND.#	CASE NAME	S	COUNSEL	REMARKS
1	i ii iii					i ii iii				
2	i ii iii					i ii iii				
3	i ii iii					i ii iii				
4	i ii iii					i ii iii				
5	i ii iii					i ii iii				
6	i ii iii					i ii iii				
7	i ii iii					i ii iii				
8	i ii iii					i ii iii				

