

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant or secretary ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist. This is a general procedural checklist for use by defence counsel in criminal cases heard by a judge alone. It should also be used, where appropriate, with the checklists for JUDICIAL INTERIM RELEASE PROCEDURE (C2), SENTENCING PROCEDURE (C3), and IMPAIRED/OVER 80 TRIAL EXAMINATION OF WITNESSES (C4). It does not include procedure for appeals. This checklist is current to March 1, 2010.</p> <p>New developments:</p> <p>Practice and Procedure Changes</p> <ul style="list-style-type: none"> • Supreme Court Pre-trial Conference Pilot Project. A new pre-trial case management process came into effect on March 1, 2010, for all Supreme Court criminal trials in Vancouver, New Westminster, Chilliwack and Kamloops. The pilot project is to run for one year, at which time it may be continued and expanded to other courthouses in the province. The new process involves a greater focus on pre-trial conferences and case management. Pre-trial conferences will now be required in all cases, whether the trial will be heard with a jury or by judge alone, even when the trial is scheduled for just a few days. The court will try to assign trial judges as early as possible for lengthy and complex trials. The Crown will also be required to file a “Crown Synopsis” form, containing a written overview of the prosecution’s case. For more information, see the Practice Direction, which appears under the “Criminal Practice Directions” on the Supreme Court’s website, accessed through www.courts.gov.bc.ca. • New Supreme Court Fix Date Procedure. A new procedure for fixing Supreme Court criminal trial dates is now available to counsel in Vancouver and New Westminster. In relatively straightforward criminal trials where defence counsel has filed a Counsel Designation Form, a date may be arranged with the Crown and the Supreme Court Scheduling Staff in advance of the fix date appearance. For more information on the procedure, see the Practice Direction, which appears under the “Criminal Practice Directions” on the Supreme Court’s website, accessed through www.courts.gov.bc.ca. • Exclusion of Evidence for Charter Breach. In <i>R. v. Grant</i>, [2009] 2 S.C.R. 353, the Supreme Court of Canada revised the test for the exclusion of evidence under s. 24(2) of the <i>Charter</i>. All counsel dealing with a <i>Charter</i> application should be thoroughly familiar with this decision and the new, modified test for determining whether evidence obtained through a <i>Charter</i> breach case should be admitted or excluded under s. 24(2). • Harmonized sales tax (“HST”). Most lawyers are obliged to collect goods and services tax (“GST”) in accordance with Part IX of the <i>Excise Tax Act</i>, R.S.C. 1985, c. E-15, and provincial sales tax (“PST”) in accordance with the <i>Social Service Tax Act</i>, R.S.B.C. 1996, c. 431. Effective July 1, 2010, PST will be eliminated and lawyers will instead be required to collect HST, also imposed under the <i>Excise Tax Act</i>. However, collection of PST will continue under rules established for the transition to HST. When billing for legal services provided before and after July 1, lawyers must charge PST and GST (but not HST) if 90% or more of the services are performed before July 1. If less than 90% of the legal services are performed before July 1, lawyers must charge PST, GST, and HST based on the proportion of services performed before and after July 1. PST collection requirements under the transitional rules continue until December 31, 2010. Further information about the PST, GST, HST, and transitional rules can be found at www.cra-arc.gc.ca/harmonization and www.gov.bc.ca/hst. 					

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<p>Criminal Code Changes</p> <p>Bill C-14, S.C. 2009, c. 22, came into force on October 2, 2009. Bill C-14:</p> <ul style="list-style-type: none"> expanded the definition of first degree murder in the <i>Criminal Code</i> to include deaths caused by an accused for the benefit of, or at the direction of, or in association with a criminal organization; amended the <i>Criminal Code</i> by creating two new “drive-by” shooting offences involving the reckless discharging of firearms; created two new offences of assaulting a police officer with a weapon, and aggravated assault of a police officer; and amended s. 810.01 of the <i>Criminal Code</i> by increasing from 12 months to 24 months the maximum duration of a recognizance made under that section where the person bound has a prior conviction for an offence involving intimidation, terrorism, or a criminal organization offence. <p>Bill S-4, S.C. 2009, c. 28, came into force on January 8, 2010. Bill S-4 created three new offences: identity theft, trafficking in identity information, and unlawful possession of or trafficking in government-issued documents.</p> <p>Bill C-25, the <i>Truth in Sentencing Act</i>, S.C. 2009, c. 29, came into force on February 22, 2010. For all offences committed on or after February 23, 2010, an accused will no longer receive the usual double time credit for pre-trial custody under s. 719(3) of the <i>Criminal Code</i>. Instead, an accused will be limited to one day of credit for each day of custody, unless he or she can fit within the exception provided in s. 719(3.1), which allows credit of one and one-half day for each day “where circumstances justify it”.</p> <p>Client identification and verification. Law Society Rules 3-91 to 3-102 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services, subject to various exceptions. See the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist for further details.</p> <p>Cash transactions. Law Society Rule 3-51.1 places restrictions on all cash transactions and regulates the circumstances in which a lawyer can accept \$7,500 or more in respect of any one client matter or transaction. On November 13, 2009, the Law Society amended this Rule to clarify its application in cases where cash retainers are received incrementally, and to indicate what procedure to follow where cash is received contrary to the Rule, but in a situation beyond the lawyer’s control.</p> <p>Additional resources. For further information on criminal law practice and procedure, see: <i>Introducing Evidence at Trial: A British Columbia Handbook</i> (Continuing Legal Education Society of British Columbia, 2007); <i>Canadian Criminal Jury Instructions</i>, 4th ed., looseleaf (CLEBC, 2005); annual editions of the <i>Annual Review of Law and Practice</i> (CLEBC); <i>Criminal Law and the Charter</i> (CLEBC, 2009); <i>Criminal Law in Provincial Court</i> (CLEBC, 2009); <i>Criminal Law and Mental Health Issues</i> (CLEBC 2008); <i>Sentencing</i> (CLEBC, 2007); and <i>Controlled Drugs</i> (CLEBC, 2006).</p>					
<p>CONTENTS</p> <ol style="list-style-type: none"> Initial Matters Bail Hearing Initial Appearance, Arraignment Hearing, Election, and Fixing a Date Preliminary Hearing Preparation for Trial Trial Sentencing Follow-up 					

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<p>CHECKLIST</p> <p>1. INITIAL MATTERS</p> <p>1.1 Initial contact by client or client’s representative:</p> <p>.1 Consider Law Society of British Columbia Rules on client identification and verification and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist. Gather additional information:</p> <p>(a) Caller:</p> <p>(i) Name, home address and telephone number, business address and telephone number (if any), occupation(s).</p> <p>(ii) Relationship to client.</p> <p>(b) Client:</p> <p>(i) Full name and aliases, home address and telephone number, business address and telephone number (if any), occupation(s).</p> <p>(ii) Present location, including telephone number and number at which messages can be left.</p> <p>(iii) Date of birth. (If the client was 12 to 17 years old at the time of the offence, refer also to the <i>Youth Criminal Justice Act</i>, S.C. 2002, c. 1.)</p> <p>(c) Charge(s).</p> <p>(d) Information number and police file number.</p> <p>(e) Date, time, and location of next court appearance.</p> <p>.2 Decide whether to accept the case, considering:</p> <p>(a) The nature of the charge.</p> <p>(b) Conflicts of interest.</p> <p>(c) The duty to make legal services available to the public (Canadian Bar Association <i>Code of Professional Conduct</i>, Chapter XIV); whether declining would make it difficult for the person to obtain legal representation.</p> <p>(d) Complexity of the case and your experience in that area of law.</p> <p>(e) Amount of fee and whether it will be paid; whether client is eligible for legal aid.</p> <p>(f) If client is ineligible for legal aid, whether it is an appropriate case for a <i>Rowbotham</i> application.</p> <p>.3 If you do not wish to act:</p> <p>(a) Advise caller and, if the caller does not know how to find other counsel, suggest names, Lawyer Referral, or legal aid.</p> <p>(b) Make a record of the advice given and file your notes.</p> <p>.4 If you agree to act:</p> <p>(a) Advise caller and client of the scope and amount of your retainer and if it must be paid in advance. (Note Law Society Rule 3-51.1 regulating the circumstances in which a lawyer may receive \$7,500 or more in cash.) Follow up in writing. (See item 1.9.2.)</p>					

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<p>(b) If you will be providing limited scope legal services, ensure client understands the limited scope of the retainer and the limits and risks associated with limited services provided and confirm the understanding, where reasonably possible, in writing.</p> <p>(c) At the first opportunity, advise the court and others concerned of the scope of your retainer, if it is limited (<i>Professional Conduct Handbook</i>, Chapter 10, Rule 10).</p> <p>(d) Be alert to cultural differences. For example, for Aboriginal clients counsel should be aware of cultural differences in communication, become familiar with their client’s background and community, and assess available resources when preparing for sentencing. Further information on Aboriginal law issues is available on the “Aboriginal Practice Points” page of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.</p> <p>1.2 Contact client by telephone, if possible:</p> <p>.1 If you were contacted initially by someone other than client:</p> <p>(a) Introduce yourself as a lawyer and tell client who contacted you and that they asked you to represent client.</p> <p>(b) Confirm that client wishes to retain you.</p> <p>(c) If contact is by telephone, advise client when you will be able to see him or her.</p> <p>(d) Advise client of confidential nature of all discussions.</p> <p>.2 Advise client not to discuss the case with anyone until he or she has seen you; advise that anything said could be used as evidence in court; do not discuss the offence with client over the telephone; advise that client should not submit to blood, hair, or saliva tests without speaking to the lawyer.</p> <p>.3 Confirm client’s present location.</p> <p>.4 Ask if client is injured or under any disability.</p> <p>.5 Spell your name and give your telephone number and address.</p> <p>.6 Ask whether client waives privilege so that lawyer can discuss case with client’s family member or designated representative.</p> <p>.7 If client is in jail, advise client not to discard any item that may contain DNA evidence (e.g., tissues, comb, bandages, female sanitary products).</p> <p>1.3 If client is in jail, consider contacting the officer in charge of the jail. If you do so:</p> <p>.1 Identify yourself as client’s lawyer.</p> <p>.2 Get the officer’s name, rank, and number.</p> <p>.3 Ask client’s location and whether there are any plans to move client.</p> <p>.4 Ask why client was not released immediately.</p> <p>.5 Ask what charges have been or are expected to be laid.</p> <p>.6 Ask about other outstanding charges or warrants.</p>					

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<p>.7 Ask whether the police will be applying by telephone to the Judicial Justice of the Peace Centre for a remand in custody. If so, consider whether you wish to attend the police station and participate in the application.</p> <p>.8 Request medical treatment if appropriate.</p> <p>.9 Tell the officer that you have advised client not to discuss the case or any other case with anyone and ask that client not be interviewed until you have seen client.</p> <p>.10 Note time of call.</p> <p>1.4 Gather information, if possible, including:</p> <p>.1 From the Crown:</p> <p>(a) A copy of the information.</p> <p>(b) Circumstances of the offence as alleged by the Crown and witnesses.</p> <p>(c) Client’s criminal record.</p> <p>(d) Statements made by client.</p> <p>(e) Statements made by anyone else including accomplices and police witnesses. Get the names and addresses of all witnesses, including those the Crown does not intend to call.</p> <p>(f) The Crown’s position on judicial interim release.</p> <p>(g) Determine the Crown’s initial sentencing position based on an early guilty plea.</p> <p>.2 Where a search warrant, production order or DNA warrant was used, get:</p> <p>(a) Copy of the search warrant, production order or DNA warrant.</p> <p>(b) Details of information used to obtain the warrant or order (from Crown or by application to justice of the peace if information unsealed and Provincial Court judge if sealed).</p> <p>.3 Wiretap authorizations and particulars.</p> <p>.4 Request copies of all photographs, video recordings, and audio recordings made by or in the possession of police or Crown counsel, along with any related transcripts. Review this material for any transcript inaccuracies. Ensure any recorded material has been provided in a format that you are able to play or access. (Crown counsel may ask that you provide an undertaking affecting how you deal with sensitive material and requiring its return upon completion of the case.)</p> <p>1.5 Discuss with client and obtain instructions as to whether you will be appearing as designated counsel on future appearances pursuant to s. 650.01 of the <i>Criminal Code</i>, R.S.C. 1985, c. C-46.</p> <p>.1 If so instructed, prepare designation and obtain client’s signature, in preparation for filing designation with the court.</p> <p>1.6 Carefully analyze the information, noting if it has been sworn, and note applicable limitations (summary conviction—six months; MVA—12 months; indictable—none).</p>					

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<p>1.7 Analyze the information collected; look for defects in the Crown’s case (e.g., technical defects in the information).</p> <p>1.8 Interview client (taking Law Society card and photo identification for entrance to the jail):</p> <p>.1 Insist on privacy.</p> <p>.2 Confirm information:</p> <p>(a) Client’s full name and aliases, address, telephone number, date of birth, occupation.</p> <p>(b) Charge.</p> <p>(c) Outstanding charges in other jurisdictions.</p> <p>(d) Court appearances.</p> <p>.3 Explain lawyer-client relationship, including:</p> <p>(a) Privilege.</p> <p>(b) Your role.</p> <p>(c) How client must make decision on how to plead, or make decision as to mode of trial, whether to plead immediately, and whether to give evidence.</p> <p>(d) Confirm client can read or write or both.</p> <p>.4 Advise client regarding calculation of your account, the method and timing of payment, and conditions upon which you undertake to act as counsel.</p> <p>.5 Discuss and make notes on:</p> <p>(a) Basic facts of alleged offence(s) (consider whether to discuss in detail in jail). Review the Crown’s case, as contained in the particulars. Ask if client agrees or disagrees with any statement of fact in the particulars.</p> <p>(b) Arrest, warnings, statements, inducements, threats, including:</p> <p>(i) Whether client was informed promptly of the reasons for arrest (<i>Canadian Charter of Rights and Freedoms</i> (“<i>Charter</i>”), s. 10(a)).</p> <p>(ii) Whether client was informed of the right to retain and instruct counsel, given the opportunity to do so without delay and able to contact counsel of choice (<i>Charter</i>, s. 10(b)) and <i>Youth Criminal Justice Act</i>, s. 25).</p> <p>(iii) Whether client was searched; whether anything was seized (<i>Charter</i>, s. 8). Determine whether search was by warrant. If so, was address where warrant executed the same as address on warrant? Warrant will be filed by location of search.</p> <p>(iv) Whether client was arbitrarily detained or imprisoned (<i>Charter</i>, s. 9).</p> <p>(v) Whether the client has made a statement to the police (<i>Youth Criminal Justice Act</i>, s. 146).</p> <p>(vi) Ask client the time of the arrest. See 24-hour time limit in the <i>Criminal Code</i>, s. 503(1)(a).</p> <p>(vii) Consider other defences or <i>Charter</i> arguments available.</p>					

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<p>(c) Witnesses.</p> <p>(d) Obtain information about any relevant environmental or cultural considerations. For example, consider the client’s level of understanding and education, the amount of family or community support available, the client’s level of motivation or initiative, whether Fetal Alcohol Syndrome or Fetal Alcohol Effect has been diagnosed, the physical environment of the youth, and for a young Aboriginal client, the non-custodial restorative justice alternatives that relate to Aboriginal offenders</p> <p>.6 Repeat advice regarding making statements. (See item 1.2.2.) If identification is in issue, find out whether a line-up has already been done and whether client was asked to participate. If not done, advise client of consequences of refusal to participate and that they are not required to participate.</p> <p>.7 Obtain instructions on the client’s plea (review factors in item 4.1.11).</p> <p>.8 If client decides to plead guilty, determine whether the plea should be immediate or delayed, and:</p> <p>(a) If immediate, see SENTENCING PROCEDURE (C3) checklist.</p> <p>(b) If delayed, seek bail and fix sentencing or trial date.</p> <p>.9 Determine custody status (escaped, serving a sentence, on bail for another offence, on parole or mandatory supervision).</p> <p>.10 Gather information for bail hearing. (See item 1 of JUDICIAL INTERIM RELEASE PROCEDURE (C2) checklist.)</p> <p>.11 Discuss the process and what you will be doing.</p> <p>1.9 Follow-up from initial interview:</p> <p>.1 Open file and diarize relevant dates, including next court appearance.</p> <p>.2 Send letter confirming retainer, instructions from client, and instructions to client.</p> <p>.3 Gather information not already obtained (see item 1.4), such as further particulars, medical and psychiatric reports.</p> <p>.4 If there is a co-accused, contact his or her counsel.</p> <p>.5 If any professional responsibility issues arise, contact the Criminal Law Practice Advisory Panel (Canadian Bar Association, British Columbia Branch) or a Bencher of the Law Society of British Columbia</p> <p>.6 Discuss effect of present charge on any outstanding charges or charges expected to be laid. Consider whether to have charges grouped together or to deal with them separately. Consider waiving charges from other jurisdictions.</p> <p>.7 Confirm compliance with Law Society of British Columbia Rules on client identification and verification.</p>					
<p>2. BAIL HEARING</p> <p>(See JUDICIAL INTERIM RELEASE PROCEDURE (C2) checklist. Note that the bail hearing takes place in remand court, or in some jurisdictions via video link to a court in another location. For s. 469 offences, the bail hearing takes place in Supreme Court chambers.)</p>					

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<p>3. INITIAL APPEARANCE, ARRAIGNMENT HEARING, ELECTION, AND FIXING A DATE</p> <p>3.1 Check whether offence is summary or indictable. If it is indictable, check whether it is within the absolute jurisdiction of a magistrate (<i>Criminal Code</i>, s. 553) or whether it must be tried in Supreme Court (<i>Criminal Code</i>, s. 469). If the offence is mixed, find out how the Crown intends to proceed. If the matter is to be heard in Supreme Court, a preliminary hearing will not be held unless requested by the client or by Crown.</p> <p>3.2 If an election is available:</p> <p>.1 Between lower and higher court, consider:</p> <p>(a) Client’s viewpoint.</p> <p>(b) Desirability of preliminary hearing, and if a preliminary hearing is to be requested, what issues should be addressed.</p> <p>(c) Expense.</p> <p>(d) Delay.</p> <p>(e) Judges available.</p> <p>(f) Possible sentence.</p> <p>.2 Between jury and non-jury trial, consider:</p> <p>(a) Whether client is going to give evidence.</p> <p>(b) Credibility of client and defence witnesses.</p> <p>(c) Nature of the defence (e.g., emotional or technical).</p> <p>(d) Criminal record.</p> <p>(e) Type of offence charged.</p> <p>(f) Complainant (e.g., age, credibility).</p> <p>3.3 Decide how long preliminary hearing and trial will take.</p> <p>3.4 Determine if there are any admissions that Crown or client will make.</p> <p>.1 For the purposes of the preliminary hearing, if one is requested.</p> <p>.2 For the purposes of trial.</p> <p>3.5 Decide whether to agree, pursuant to <i>Criminal Code</i>, s. 536.5, to limit the scope of the preliminary hearing if one is requested.</p> <p>3.6 Find out when client would like trial to take place.</p> <p>3.7 Initial appearance, arraignment hearing, and fix date:</p> <p>.1 Complete arraignment report in preparation for client’s initial appearance.</p> <p>.2 If a preliminary hearing is to be requested, prepare the statement required by <i>Criminal Code</i>, s. 536.1, identifying the issues upon which you want evidence given at the preliminary hearing, and the witnesses you wish heard at the preliminary hearing.</p> <p>.3 If the arraignment hearing is to take place in a location more than 25 kilometers from your normal place of practice, determine whether it is appropriate to apply to the justice of the peace presiding at the initial appearance for an order relieving you of the requirement to attend at the arraignment hearing.</p>					

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<p>.4 Review Crown’s arraignment report.</p> <p>.5 File client’s arraignment report and arrange date for arraignment hearing. In summary conviction proceedings, if both Crown and defence have filed arraignment reports and written waivers, then the matter will proceed directly to a fix date and no arraignment hearing will be held unless ordered by the court.</p> <p>.6 Attend arraignment hearing with client or send designated counsel to appear on your behalf.</p> <p>.7 Advise client in advance of the correct words to say when making an election at the arraignment hearing.</p> <p>.8 If preliminary hearing is wanted, request that it be held.</p> <p>3.8 Advise client of the date of the trial confirmation hearing and preliminary hearing or trial and advise of consequences of failing to appear.</p> <p>3.9 Confirm date for trial confirmation hearing and preliminary hearing or trial with client in writing.</p> <p>3.10 Diarize the file for 15 to 30 days prior to the trial confirmation hearing to prepare the trial readiness report or to properly remove yourself as counsel if not properly retained or instructed.</p> <p>3.11 Prepare and deliver notice of intention to call any expert witnesses if matter will be for trial, pursuant to <i>Criminal Code</i>, s. 657.3; notice must be delivered to the Crown at least 30 days before trial.</p>					
<p>4. PRELIMINARY HEARING</p> <p>The <i>Criminal Code</i> narrows the focus and limits the evidence required to be called on a preliminary hearing. However, a client retains the right to request that a preliminary inquiry be held and that evidence be called on all matters that are in issue.</p> <p>4.1 Prepare for preliminary hearing:</p> <p>.1 Collect fee for preliminary hearing and deposit in trust account.</p> <p>.2 If a focusing hearing is ordered prior to the preliminary hearing, pursuant to <i>Criminal Code</i> s. 536(4), prepare for and attend the hearing.</p> <p>.3 Consider whether to visit the scene of the alleged offence.</p> <p>.4 Read relevant <i>Criminal Code</i> provisions and key cases regarding the offence, particulars, the information, etc., and consider whether:</p> <p>(a) There are any defects in the information which would justify a motion to have the information quashed.</p> <p>(b) To move for severance or joinder of counts.</p> <p>(c) Any defences or evidentiary issues are apparent from the particulars. (Note: a preliminary inquiry is not a court of competent jurisdiction for the purposes of s. 24 remedies under the <i>Charter</i>. See <i>R. v. Hynes</i>, 2001 SCC 82, <i>R. v. Seaboyer</i>, [1991] 2 S.C.R. 577 at 640-1, and <i>R. v. Moore</i>, [1992] 1 S.C.R. 619 at 620.)</p> <p>.5 Obtain any documents you think would be helpful, including copies of all documents the Crown will be relying on and any other documents in Crown or police possession that they do not intend to rely on but may be relevant.</p>					

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<p>.6 If Crown gives notice that evidence will be tendered in written form under <i>Criminal Code</i>, s. 540(7), consider making an application pursuant to s. 540(9) that witness(es) be required to appear for cross examination.</p> <p>.7 Interview client regarding witnesses and further details regarding the offence.</p> <p>.8 For witnesses:</p> <ul style="list-style-type: none"> (a) Arrange for witnesses to be interviewed and statements obtained. If possible have another person conduct the interviews. Have witnesses sign notes of their statements. Determine whether the witness wishes to testify under oath or under solemn affirmation. (b) If any witness interviewed wishes to recant evidence or statements given previously, consider whether the witness should be referred for independent legal advice on the potential consequences. (c) Consider whether Crown should be given notice of any alibi witnesses. Where the accused fails to give notice of an alibi to the Crown in advance of trial, the trier of fact may draw an adverse inference if the late alibi notice does not allow for a meaningful investigation by the Crown and police. <p>.9 Research defences and evidentiary issues and decide whether to raise at preliminary hearing or wait until trial.</p> <p>.10 If applying for an adjournment, ensure that proper notice of the application is given, pursuant to the Criminal Caseflow Management Rules.</p> <p>.11 If client wishes to plead guilty:</p> <ul style="list-style-type: none"> (a) Advise client of possibility of acquittal. (b) Advise client of likely sentence range if client pleads or is found guilty. (c) Advise client, if offence is a designated offence that could result in a mandatory or discretionary order, that client may be required to provide a DNA sample for the purpose of recording client’s DNA profile in the national DNA bank. (d) Advise client, if offence is a designated offence that could result in a mandatory or discretionary order, that client may be prohibited by the Court from possessing firearms, ammunition, and several other items listed in ss. 109 and 110 of the <i>Criminal Code</i>. (e) Advise client if offence is a designated offence that could result in an order that the client comply with the provisions of the <i>Sex Offender Information Registration Act</i>, S.C. 2004, c. 10. (f) Ensure that the client understands and wants to enter a plea in accordance with the requirements of s. 606(1.1) of the <i>Criminal Code</i> and is prepared to respond to any inquiries that the court may make under the section. (g) Obtain instructions that client committed the offence and had the necessary mental element. Confirm these instructions in writing, signed by client. (h) Contact the Crown to discuss reaching an agreement on plea and sentencing (recognizing that the court will not be bound by any such agreement). 					

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<p>(i) Discuss the Crown’s position with client:</p> <p>(i) If client wishes to plead guilty, fix date and prepare for sentencing hearing (see SENTENCING PROCEDURE (C3) checklist).</p> <p>(ii) If client does not wish to plead guilty, proceed with preparations for preliminary hearing.</p> <p>.12 Prepare client, discussing what will happen and what to do and say (e.g., how to make elections, <i>Criminal Code</i>, s. 536(2)).</p> <p>.13 Prepare “trial brief” for preliminary hearing:</p> <p>(a) Write out essential elements of offence that the Crown must prove.</p> <p>(b) Prepare cross-examination, considering:</p> <p>(i) Who the Crown will call.</p> <p>(ii) What each witness will say (i.e., prove).</p> <p>(iii) The weaknesses of each witness.</p> <p>(iv) What testimony each can give that might help client.</p> <p>(v) How to frame questions to emphasize evidence positive to client and minimize the impact of evidence negative to client.</p> <p>(c) Arguments on <i>Charter</i> or evidentiary issues. (Consider whether the arguments can be made at the preliminary inquiry or whether they should be made at trial.) Consider what foundation must be laid for potential future <i>Charter</i> applications.</p> <p>(d) Determine from Crown whether they will seek committal on any charges other than those on the Information.</p> <p>(e) Arguments on committal.</p> <p>(f) Consider asking for ban on publication of evidence (<i>Criminal Code</i>, s. 539), and exclusion order and complainant identity ban (<i>Criminal Code</i>, s. 486).</p> <p>4.2 Preliminary hearing:</p> <p>.1 When case is called, introduce yourself, advise if your client is present and you are ready to make any pre-trial arguments (e.g., defective information) or to proceed to a preliminary hearing.</p> <p>.2 If the Crown stays or withdraws the charge:</p> <p>(a) Explain this to client.</p> <p>(b) Send reporting letter and statement of account.</p> <p>(c) Close file.</p> <p>.3 When charge is read, client makes election. (In some jurisdictions election is made at the arraignment hearing.)</p> <p>.4 When Crown witnesses testify:</p> <p>(a) Take notes.</p> <p>(b) Be alert to irrelevant, hearsay, or other objectionable evidence.</p> <p>(c) Decide whether to cross-examine.</p> <p>(d) Request voir dire on any evidence (statement) that can be excluded at a preliminary hearing before the evidence (statement) is led by the Crown.</p>					

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<p>.5 If there is a voir dire:</p> <ul style="list-style-type: none"> (a) Decide whether to waive it. (b) Decide whether to cross-examine. (c) Decide whether to call evidence. (d) Decide whether to make submissions. (e) If evidence (statement) is found to be admissible, decide whether to consent that evidence on the voir dire should form part of the preliminary hearing. <p>.6 Decide whether to apply to re-elect trial by a Provincial Court judge.</p> <ul style="list-style-type: none"> (a) Argue for re-election to a Provincial Court judge without a jury. (b) If re-election is not granted, proceed to item 4.2.7. (c) If re-election is granted: <ul style="list-style-type: none"> (i) Enter a plea of not guilty. (ii) Make application for the evidence of the preliminary hearing to be the evidence at trial. (iii) Consider calling defence evidence. (iv) Argue for acquittal. (d) If judge acquits client: <ul style="list-style-type: none"> (i) Explain to client. (ii) Send reporting letter and statement of account. (iii) Comply with any undertaking to return evidence to Crown. (iv) Close file. (e) If judge convicts client, see SENTENCING PROCEDURE (C3) checklist. <p>.7 Decide whether client should say anything when questioned by judge (e.g., alibi defence) or whether you should advise the court instead (notify the Crown in advance).</p> <p>.8 Decide whether to make submissions on committal.</p> <p>.9 If client is discharged:</p> <ul style="list-style-type: none"> (a) Explain to client. (b) Send reporting letter and statement of account. (c) Comply with any undertaking to return evidence to Crown. (d) Close file. <p>.10 If client is committed:</p> <ul style="list-style-type: none"> (a) Obtain date and place of next court appearance. (b) Diarize date. (c) Explain to client and ensure client has noted the date and place. <p>4.3 Follow-up:</p> <ul style="list-style-type: none"> .1 Order transcript (getting Legal Services Society authorization if client is on legal aid) and diarize for receipt. .2 Decide whether to re-elect mode of trial. Note <i>Criminal Code</i>, s. 561. 					

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<p>.3 Trial date:</p> <ul style="list-style-type: none"> (a) Fix date and diarize. (b) Advise client and ensure client has noted the date and place. (c) Confirm trial date with client in writing. (d) Diarize file for 30 to 45 days prior to trial to remove from record (if not fully instructed or retained) and for Constitutional Question notice, if required. <p>5. PREPARATION FOR TRIAL</p> <p>5.1 Study transcript, note important evidence, and ask client to review transcript.</p> <p>5.2 Interview client in light of evidence obtained at preliminary hearing.</p> <p>5.3 If client wishes to plead guilty:</p> <ul style="list-style-type: none"> .1 Advise client of possibility of acquittal. .2 Advise client of likely sentence range if client pleads or is found guilty. .3 Advise client if offence is a designated offence that could result in a mandatory or discretionary order that client may be required to provide a DNA sample for the purpose of recording client’s DNA in the national DNA bank. .4 Advise client, if offence is a designated offence that could result in a mandatory or discretionary order, that client may be prohibited by the court from possessing firearms, ammunition, and several other items listed in ss. 109 and 110 of the <i>Criminal Code</i>. .5 Advise client if offence is a designated offence that could result in an order that the client comply with the provisions of the <i>Sex Offender Information Registration Act</i>. .6 Obtain instructions that client committed the offence and had the necessary mental element. Confirm instructions in writing signed by client. .7 Contact the Crown to discuss reaching an agreement on plea and sentencing (recognizing that the court will not be bound by any such agreement). .8 Discuss the Crown’s position with client. .9 Determine client’s wishes: <ul style="list-style-type: none"> (a) If client wishes to plead guilty, fix date and prepare for sentencing hearing (see SENTENCING PROCEDURE (C3) checklist). Consider calling the matter ahead for guilty plea. (b) If client does not wish to plead guilty, proceed with preparations for trial. <p>5.4 Obtain copy of indictment and examine for defects.</p> <p>5.5 Research:</p> <ul style="list-style-type: none"> .1 Research issues and defences (in light of evidence disclosed at preliminary hearing). .2 Consider whether any special pleas are appropriate. .3 Factual investigations (e.g., visit scene, expert examination). 					

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<p>5.6 Witnesses:</p> <ul style="list-style-type: none"> .1 Arrange for interviews and statements. (See item 4.1.8.) .2 Decide whom to call. .3 Prepare witnesses for trial. .4 Subpoenas: <ul style="list-style-type: none"> (a) Prepare and have signed by the justice of the peace in the appropriate court registry. (b) Deliver to sheriff for service or arrange other service through a peace officer or authorized process server. (c) Obtain verification of service or affidavit of attempted service. <p>5.7 Prepare trial plan.</p> <p>5.8 Decide if you require an adjournment; if so:</p> <ul style="list-style-type: none"> .1 Discuss with client. .2 Notify the Crown and see if they will consent. .3 Call case ahead in court clerk’s office or court registry. .4 Appear in court with client and explain reasons for seeking an adjournment. .5 If adjournment is granted: <ul style="list-style-type: none"> (a) Fix date and diarize it. (b) Explain to client and ensure client has noted the date. Confirm date with client in writing. (c) Notify witnesses. <p>5.9 Prepare trial brief, including:</p> <ul style="list-style-type: none"> .1 Write out essential elements of offence that the Crown must prove. .2 Whether client should testify; consider your duty as an officer of the court (<i>Professional Conduct Handbook</i>, Chapter 1, Canons of Legal Ethics, and Canadian Bar Association <i>Code of Professional Conduct</i>, Chapter IX). .3 Opening address. .4 Direct examination. .5 Cross-examination, considering: <ul style="list-style-type: none"> (a) Whom the Crown will call. (b) What each witness will say (i.e., prove). (c) The weaknesses of each witness. (d) What testimony each can give that might help client. (e) How to frame questions to emphasize evidence positive to client and minimize the impact of evidence negative to client. (f) If client is charged under ss. 253(1)(a) or (b) or 254(5) of the <i>Criminal Code</i>, see the IMPAIRED/OVER 80 TRIAL EXAMINATION OF WITNESSES (C4) checklist. 					

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<p>.6 Evidentiary arguments; arguments regarding admissibility of statements for voir dire.</p> <p>.7 Obtain a copy of the report of any defence experts, or prepare a summary of the expert's opinion, for disclosure to Crown pursuant to <i>Criminal Code</i>, s. 657.3(3)(c). Notice of any defence expert must be given to the Crown at least 30 days before the trial starts, while the expert report or summary must be given to the Crown no later than the close of the Crown's case.</p> <p>.8 <i>Charter</i> arguments.</p> <p>.9 Closing argument.</p> <p>5.10 Prepare submissions on sentence (see SENTENCING PROCEDURE (C3) checklist).</p> <p>5.11 Prepare client for trial, including: dress, manner, testifying and being cross-examined, possible sentences and client's preference with regard to sentence.</p> <p>5.12 If any professional responsibility issues arise, contact the Criminal Law Practice Advisory Panel (Canadian Bar Association, British Columbia Branch) or a Bencher of the Law Society of British Columbia.</p> <p>5.13 If you are considering withdrawing as counsel, ensure that it is for a proper purpose and do so as early as possible. (See Chapter 10 and footnotes of the <i>Professional Conduct Handbook</i>.)</p> <p>5.14 Consider if notice is required under the <i>Constitutional Question Act</i>, R.S.B.C. 1996, c. 68.</p> <p>5.15 Consider if an application for production of third-party records is required. Any such application should be made well in advance of trial, and will require notice to all third-party record-holders and persons whose privacy may be affected; see the provisions in ss. 278.1, 278.2, 278.3, 278.4, 278.5, 278.6, and 278.7 of the <i>Criminal Code</i>, as well as <i>R. v. O'Connor</i>, [1995] 4 S.C.R. 411.</p>					
<p>6. TRIAL</p>					
<p>6.1 When the case is called, introduce yourself, say that your client is present, and you are ready to proceed.</p> <p>6.2 Consider any preliminary motions:</p> <p>.1 Apply for a stay of proceedings based on a violation of s. 11(a) or (b) of the <i>Charter</i>.</p> <p>.2 Attack search warrants for a breach of s. 8 of the <i>Charter</i>.</p> <p>.3 Apply for severance.</p> <p>6.3 If the Crown seeks an adjournment:</p> <p>.1 Decide whether to object or consent, based on client's instructions.</p> <p>.2 If the adjournment is granted:</p> <p>(a) Fix date and diarize it.</p> <p>(b) Explain to client and ensure client notes the new date. Confirm date in writing.</p> <p>6.4 Tell client how to respond when charge is read.</p>					

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<p>6.5 If the Crown calls no evidence:</p> <ul style="list-style-type: none"> .1 Apply for dismissal. .2 Explain to client. .3 Send reporting letter and statement of account. .4 Comply with any undertaking to return evidence to Crown. .5 Close file. <p>6.6 When Crown witnesses testify:</p> <ul style="list-style-type: none"> .1 Take notes. .2 Be alert to irrelevant, hearsay, or other objectionable evidence (e.g., evidence obtained in violation of the <i>Charter</i>). .3 Decide whether to cross-examine. <p>6.7 If there is a voir dire:</p> <ul style="list-style-type: none"> .1 Decide whether to waive it. .2 Decide whether to cross-examine; confine to voluntariness and circumstances of statement. .3 Decide whether to call evidence. .4 Decide whether to make submissions. .5 If statement is found to be admissible, decide whether to consent that evidence on the voir dire should form part of the trial. <p>6.8 When the Crown concludes its case, decide whether to make a no evidence motion; if so:</p> <ul style="list-style-type: none"> .1 Make motion. .2 If client is acquitted: <ul style="list-style-type: none"> (a) Explain to client. (b) Send reporting letter and statement of account. (c) Comply with any undertaking to return evidence to Crown. (d) Close file. <p>6.9 Decide whether to call evidence:</p> <ul style="list-style-type: none"> .1 If you call no evidence, argue for acquittal on the grounds of insufficient evidence. .2 If you call evidence: <ul style="list-style-type: none"> (a) Decide whether to make opening statement. (b) Call witnesses. (c) Consider getting written instructions that client does or does not wish to testify. (d) Consider whether to re-examine on new matters raised in cross-examination after the Crown has cross-examined. <p>6.10 If the Crown calls rebuttal evidence:</p> <ul style="list-style-type: none"> .1 Decide whether to object. 					

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<p>.2 If rebuttal is allowed, decide whether to cross-examine.</p> <p>6.11 Make final argument.</p> <p>6.12 If client is acquitted:</p> <p>.1 Explain to client.</p> <p>.2 Send reporting letter and statement of account.</p> <p>.3 Comply with any undertaking to return evidence to Crown.</p> <p>.4 Close file.</p> <p>6.13 If client is convicted, see SENTENCING PROCEDURE (C4) checklist.</p> <p>7. SENTENCING (See SENTENCING PROCEDURE (C4) checklist.)</p> <p>8. FOLLOW-UP</p> <p>8.1 Discuss with client the advisability of an appeal.</p> <p>8.2 Notify client of limitation periods for appeal; diarize.</p> <p>8.3 Send reporting letter and statement of account.</p> <p>8.4 Comply with any undertaking to return evidence to Crown.</p> <p>8.5 If client is not going to appeal, close file.</p>					

