

**PROVINCIAL COURT OF ALBERTA
NOTICE TO THE PROFESSION**

PRELIMINARY INQUIRIES, and AMENDMENTS TO THE CRIMINAL CODE

[v. 3.6 // 2004.05.18]

May 2004 – effective date: June 1, 2004

The portions of Bill C-15A, S.C. 2002 c. 13, and portions of Bill C-14, 3rd Session, 37th Parliament, 52-53 Elizabeth II, 2004 relating to preliminary inquiries are currently scheduled to come into force on June 1, 2004. This Practice Note comes into force on that date or such other date that the Code amendments come into force.

Commentary

The amendments to the preliminary inquiry regime represent a change in the conduct and role of the preliminary inquiry. Notwithstanding these amendments, the essential function of the preliminary inquiry remains intact, i.e., that for serious alleged criminal offences for which the accused has elected trial in the Court of Queen's Bench the Crown is obliged at law to present the essence of its case to a judge for a preliminary determination of whether the accused should be committed to a trial.

The amendments are described in Legislative Summary LS-410E, published by the Parliamentary Research Branch of the Parliament of Canada, issued October 12, 2001, and amended September 30, 2002. In that document the author states (emphasis added):

“Preliminary inquiries are pre-trial hearings at which the prosecution must show that there is evidence to justify putting the accused on trial. Preliminary inquiries are only conducted in cases where the prosecution is proceeding by indictment.

As a way of reducing the time it takes to bring criminal cases to trial, and as a way of minimizing the extent to which complainants (particularly those in sexual assault cases) are subject to examination and cross-examination, federal and provincial governments have considered ways to reduce the number and duration of preliminary inquiries, including abolishing them altogether. However, it appears for the time being that the federal government prefers to narrow the scope of preliminary inquiries and reduce their number. The proposals contained in Bill C-15A are part of this approach. Other elements of this legislative strategy include increasing the maximum punishment for offences prosecuted summarily, and the reclassification of a large number of indictable offences as hybrid offences (where the Crown has the option of proceeding summarily and thus precluding a preliminary inquiry). However, these are not addressed in the bill.”

The role of the Court, pursuant to the amendments, is to assist the parties to conduct and participate in an efficient yet effective preliminary inquiry. This Practice Note is intended to provide for consistency of process and procedure throughout Alberta. The procedure and direction set out is meant to provide guidance to the public, members of the legal profession, court clerks and administrative staff, and judges of the Provincial Court of Alberta.

Practice Rules – Preliminary Inquiries

[1] **Application of Practice Note** – this practice note applies to matters where counsel represents the accused, and, where specifically indicated (as stipulated in the statutory amendments), unrepresented accused. The practice note applies to proceedings in ordinary criminal courts and in youth justice court.

[2] Terminology

Accused includes a *young person* as that term is defined and used under the *Youth Criminal Justice Act*.

Clerk of the Court means a clerk of the Provincial Court of Alberta.

Court means the Provincial Court of Alberta and includes the **Court** sitting as a *Youth Justice Court* as that term is defined in the *Youth Criminal Justice Act*.

Form (or, form) means a form for the purpose of a preliminary inquiry or hearing as provided by the Clerk of the Court, or which may be available on the Alberta Courts web site, or such other document(s) provided by a party that includes the same contents as such forms, as are described hereafter and attached hereto, that are acceptable to the Court. Forms for the purposes herein are not prescribed by the Code amendments, however they have been created, and are required in order to assist the Court, the parties and Court administration in the effective implementation of the amendments. The use of these Forms is not intended to be contrary to the principles in s. 844 or in s. 849 of the *Code*.

Information means the document charging the accused with offences pursuant to the *Criminal Code* or other Act of Canada or Alberta.

Judge means a judge of the Provincial Court of Alberta. The *Criminal Code* uses the term “justice” in, *inter alia* Part XVIII. Under Alberta law, a justice of the peace does not have jurisdiction to preside at a preliminary inquiry by virtue of s. s. 6(4) of the *Justice of the Peace Act*. When a *Code* reference under Part XVIII is to a *justice*, a Provincial Court Judge has the jurisdiction referred to in the Province of Alberta. Therefor the use of the term *judge* in this Practice Note has the meaning attributed to a *justice* as that term is used in Part XVIII, including the relevant amendments which are the subject matter of this Practice Note.

Party means counsel for the Crown or any accused, but not an unrepresented accused.

Hearing means a hearing ordered by a judge before whom a preliminary inquiry is to be held, for the purposes of s. 536.4.

Section numbers refer to the amendments to the *Criminal Code* sections, enacted as a result of Bill C-15A, S.C. 2002 c. 13, unless otherwise specified.

[3] **Offences governed by the Amendments** – The amendments are applicable to any offence where a right to request a preliminary inquiry exists at law if an election has not been made by June 1, 2004. If no such election has been made by that date, the new election pursuant to amended section 536(2) will be read to the accused.

[4] **Preliminary Inquiry Upon Request** – Where any of the accused elects or is deemed to have elected to be tried by a judge alone or a court composed of judge and jury, a preliminary inquiry will only be held if a party or an unrepresented accused requests a preliminary inquiry. If no preliminary inquiry is requested the accused shall be committed for trial on the offences charged. In the latter case the accused shall be ordered to appear at the next available arraignment date for a trial date to be fixed.

[5] **Preliminary Inquiry requested by accused who is/are represented by counsel** – Where accused represented by counsel request a preliminary inquiry the presiding judge, as a general rule, will set the matter over for two weeks or such other time reasonable in the circumstances. This period of time is to enable the party (for an accused) requesting a preliminary inquiry to fill out a statement in writing in Form “A” (example copy attached) that identifies: (a) the issues on which the requesting party wants evidence to be given at the inquiry; and (b) the witnesses that the requesting party wants to hear at the inquiry, as required by *s. 536.3*. Disclosure or substantial disclosure of its case should be made by the Crown to counsel for the accused to allow counsel for the accused to fill out Form “A”. Where sufficient disclosure has not been made, the judge may allow sufficient time to make sufficient disclosure. Form “A” shall be filed with the clerk of the court. A copy of a completed Form “A” shall be delivered by requesting counsel, by ordinary mail, electronically, or by equivalent means to counsel for the opposing party and to any unrepresented accused. At any subsequent appearance the presiding judge may schedule the preliminary inquiry date. The presiding judge may, alternatively, adjourn the matter to await the return of Form “A” prior to scheduling the preliminary inquiry date.

Form “A” is the form of document, and thereby the approved mechanism used to comply with the requirement to submit a statement in writing pursuant to *s. 536.3*. The clerk of the court shall affix Form “A” to the appropriate Information.

[6] **Preliminary Inquiry requested by the Crown** – Where a preliminary inquiry is requested by the Crown the presiding judge, as a general rule, will set the matter over for two weeks or such other time reasonable in the circumstances. This period of time is to enable Crown counsel to fill out a statement in writing in Form “A” that identifies: (a) the issues on which the requesting party wants evidence to be given at the inquiry; and (b) the witnesses that the requesting party wants to hear at the inquiry, as required by *s. 536.3*. A copy of a completed Form “A” shall be delivered by Crown counsel, by ordinary mail, electronically, or by equivalent means to counsel for the opposing party(s) and to any unrepresented accused. At any subsequent appearance the presiding judge may schedule the preliminary inquiry date. The presiding judge may, alternatively, adjourn the matter to await the return of Form “A” prior to scheduling the preliminary inquiry date. Counsel for other parties, and any unrepresented accused may seek directions pertaining to disclosure, as the matter is adjourned for the purpose of submission of a completed Form “A”.

The clerk of the court shall affix Form “A” to the appropriate Information.

[7] Preliminary Inquiry requested by an unrepresented accused – Where an unrepresented accused requests a preliminary inquiry, no Form “A” is required. The matter may be scheduled for a preliminary inquiry by the presiding judge. Where sufficient disclosure has not been made, the judge may allow sufficient time to make sufficient disclosure. The presiding judge may, alternatively, adjourn the matter for other purposes relevant to the preliminary inquiry regime as provided by law.

[8] Application for s. 536.4 Hearing – The parties, including an unrepresented accused may apply for a hearing pursuant to *s. 536.4(1)*. Only the judge scheduled to preside at the preliminary inquiry may entertain an application for a *s. 536.4* hearing. That judge is also empowered to order a *s. 536.4* hearing on his or her own motion. A party or an unrepresented accused making an application for a *s. 536.4* hearing shall execute Form “B” (example copy attached), which includes a statement of the reasons for the hearing. The reasons for the *s. 536.4* hearing must be connected to or justified by one of the reasons specified in *s. 536.4(1)*. Form “B” shall be filed with the clerk of the court.

Form “B” is a form of document prescribed by this Practice Note to record and caused to be filed with the Clerk. Form “B” is not prescribed at law. However, Form “B” is derived from and pertinent to *s. 536.4*. The clerk of the court shall affix Form “B” to the appropriate Information.

The clerk of the court shall forward a filed Form “B” to the appropriate Assistant Chief Judge. The Assistant Chief Judge shall appoint a judge to preside at the preliminary inquiry. The judge who is scheduled to preside at the preliminary inquiry will consider the application for the *s. 536.4* hearing. The consideration of whether to order a *s. 536.4* hearing may be decided by that judge based upon a filed Form “B,” or the judge may hear the application in chambers, by teleconference, or in open court. The application shall be made in open court where there are unrepresented accused.

In the event that a hearing is ordered, the Judge will transmit Form “B” to court administration for the purposes of scheduling a date for the hearing. The local judicial scheduling officer will set a date for the hearing, after having obtained agreement from the parties.

[9] The s. 536.4 Hearing – A *s. 536.4* hearing need not take place in a courtroom (unless there is an unrepresented accused). In addition, a *s. 536.4* hearing need not be heard by the judge who is scheduled to preside at the preliminary inquiry, although it must be ordered by the judge who is scheduled to preside at the preliminary inquiry. Generally, the judge who is scheduled to preside at the preliminary inquiry will also conduct a *s. 536.4* hearing. Where all accused are represented by counsel the *s. 536.4* hearing should generally take place in chambers or by teleconference. If any of the accused is unrepresented, the *s. 536.4* hearing shall take place in open court.

[10] Agreements and/or admissions arising from a s. 536.4 Hearing – All admissions of fact or agreements made by the parties, including unrepresented accused, which result from a s. 536.4 hearing shall be recorded by the judge who presides at the hearing, pursuant to s. 536.4(2). The parties, including unrepresented accused shall fill out Form “C” (example copy attached) to indicate their agreement to the admissions of fact or other agreements that result from the hearing. The presiding judge shall endorse the completed Form “C” and submit it to the clerk of the court.

Form “C” is the form of document, and thereby the approved mechanism used to comply with the requirement to record agreements and or admissions made a s. 536.4 hearing, pursuant to s. 536.4(2).

[11] Mutual Agreement concerning the scope of a preliminary inquiry pursuant to s. 536.5 – Whether or not there is a s. 536.4 hearing, the parties and unrepresented accused can agree, on a mutual basis to limit the scope of the preliminary inquiry, pursuant to s. 536.5 without judicial direction or intervention. Parties or unrepresented accused agreeing to limit the scope of the preliminary inquiry shall complete and mutually execute Form “D” (example copy attached) and file it with the clerk of the court.

Form “D” is the form of document, and thereby the approved mechanism used to comply with the requirement to file or record an agreement made pursuant to s. 536.5. The clerk of the court shall affix a completed Form “D” to the appropriate Information.

[12] Limited Scope of the Preliminary Inquiry – Pursuant to s. 537(1)(i) the preliminary inquiry shall be conducted in accordance with the admissions or agreements contained in Form “C” or Form “D” unless the judge is satisfied that to do so would be contrary to the best interests of the administration of justice. Where the parties or an unrepresented accused mutually agree to limit the scope of a preliminary inquiry pursuant to s. 536.5, the judge may order the accused to stand trial without hearing evidence upon any other issue, pursuant to s. 549(1.1).

[13] Evidence tendered pursuant to s. 540 – Pursuant to s. 540(7), a party or an unrepresented accused may tender such information, as evidence at the preliminary inquiry, as is described in s. 540(7) at a preliminary inquiry. Evidence tendered pursuant to s. 540(7) need not be otherwise admissible, but must be evidence that the judge considers credible or trustworthy in the circumstances of the case. Evidence tendered pursuant to s. 540(7) could include written witness statements, witness statements recorded in another fashion, or other information. Generally, the admissibility of any information tendered as evidence by any party, pursuant to s. 540(7) or otherwise, shall be determined at the preliminary inquiry, and not in any prior hearing.

[14] Notice under s. 540 – A party or an unrepresented accused intending to tender evidence pursuant to s. 540(7) shall give written notice within a reasonable time period in advance of the date of the preliminary inquiry to the Court, the opposite party(s) and any unrepresented accused, as required by s. 540(8). Delivery of the s. 540(8) notice and copies of

the statement(s) not less than 21 days prior to the date of the preliminary inquiry is presumptively reasonable.

The party shall deliver, together with the notice, a copy of the statement reduced to writing, if any, or otherwise recorded, to the opposite or other party(s) and any unrepresented accused.

[15] Section 540(9) applications for appearance of a witness – A *s. 540(9)* application for the appearance of a witness shall be made not less than 7 days prior to the date the evidence [proposed to be tendered pursuant to *s. 540(7)*] is intended to be adduced, unless the judge orders otherwise. A prior *s. 540(9)* application made in a timely manner will enable the judge hearing the application to order the appearance of a witness without having to adjourn the preliminary inquiry. Where a witness is ordered to appear pursuant to *s. 540(9)*, the Crown shall subpoena such witness.

[16] Requests for absence of an accused – Pursuant to *s. 537(1)(j.1)* an unrepresented accused or counsel for an accused may request that the accused be absent during the whole or part of a preliminary inquiry. This application may be made prior to or during the preliminary inquiry. The judge may permit the absence of the accused on any conditions that are deemed appropriate.

[17] Young Persons – This practice note applies to proceedings in youth justice court and as defined above, to a young person as defined in the *Youth Criminal Justice Act*.

END

Attachments:

Form “A” Statement of Issues and Witnesses [*s. 536.3*]

Form “B” Request for a Hearing [*s. 536.4(1)*]

Form “C” Agreement and/or Admissions made at a Hearing [*s. 536.4(2)*]

Form “D” Agreement to limit the scope of the Preliminary Inquiry [*s. 536.5*]

Note: the Forms attached hereto are for the convenience of the reader, but are not, as hard copy forms, the Forms that are suggested for actual use by parties. Those Forms (identical in content but not format) are available from the Clerk or Court Administrator. They are also intended to be available electronically, from the Alberta Courts web site. The actual Forms are formatted on the basis of 8 ½” x 14” paper, so as to ensure, when printed in hard copy, that they are contained on a single piece of paper (to avoid being separated and thereafter misfiled). Despite this, Form “B”, even on 8 ½” x 14” paper, requires 2 pages. For submission purposes, thus prior to execution, Form “B” (in hard copy) must be copied onto two sides of a single sheet of paper (to avoid being lost or misfiled).

Section 536.3 *Criminal Code*

Docket number _____

This document when completed and filed will be attached to the Information by the Clerk

NOTE: PLEASE PRINT LEGIBLY

FORM "A"
COUNSEL STATEMENT IDENTIFYING ISSUES AND WITNESSES

Name of Accused [*Young Person*] _____

The next appearance of the Accused [*Young Person*] is the ____ day of _____
20____, at _____ o'clock AM/PM, Courtroom # _____ at _____ in the Province
of Alberta.

Charges:

_____, HAVING REQUESTED A PRELIMINARY INQUIRY, COUNSEL

a) Wishes evidence to be given at the inquiry on only the following issues:

b) Wishes to hear only the following witnesses at the inquiry:

Dated this ____ day of _____, 20__ at _____ in the Province of Alberta

Signature: _____

Print Name legibly: _____

Contact information (all required):

Address: _____

Phone No. _____

Fax No. _____

Counsel for _____

Note: This document must be filed with the Clerk of the Court and a copy provided by the submitting party to other parties and any unrepresented accused.

Section 536.4(1) *Criminal Code*

Docket Number _____

This document when completed and filed will be attached to the Information by the Clerk

NOTE: PLEASE PRINT LEGIBLY

Form “B”

REQUEST FOR HEARING PURSUANT TO SECTION 536.4(1) CRIMINAL CODE

Name of Accused [*Young Person*] _____

The next appearance of the Accused [*Young Person*] is the ____ day of _____
20____, at _____ o’clock AM/PM, Courtroom # _____ at _____ in the Province
of Alberta.

Charges:

Reasons: (*to assist the Court in anticipation of the requested hearing*) *Please check one (or more) of the reasons listed below:*

____ (a) to assist the parties to identify the issues on which evidence will be given at the inquiry;

____ (b) to assist the parties to identify the witnesses to be heard at the inquiry, taking into account the witnesses’ needs and circumstances;

____ (c) to encourage the parties to consider any other matters that would promote a fair and expeditious inquiry.

Regarding point “(c)” above – please specify the nature of the “other matters”:

We / I hereby request a hearing pursuant to s. 536.4(1) [*executed by the party or person requesting*]

Signature: _____

Print Name legibly: _____

Contact information (all required):

Address: _____

Phone No. _____
Fax No. _____
Counsel for _____

or, if applicable:

Signature: _____
Print Name legibly: _____
Contact information (all required):
Address: _____

Phone No. _____
Fax No. _____
The Accused [*Young Person*]

Signature: _____
Print Name legibly: _____
Contact information (all required):
Address: _____

Phone No. _____
Fax No. _____
Prosecutor

Order for Hearing

_____ I hereby order that a hearing be held pursuant to s. 536.4(1) of the *Criminal Code*.

_____ I hereby order that no s. 536.4(1) hearing be held.

Date: _____

Signature: _____
Print Name legibly: _____
Judge of the Provincial Court of Alberta

Note: This document must be filed with the Clerk of the Court.

Note: The appropriate local judicial scheduling officer will set a date for the s. 536.4(1) hearing after having sought agreement with the parties.

Further Note: For submission purposes, please copy the original onto 2 sides of one sheet of paper (before execution), so as to ensure that this second sheet is not misplaced or misfiled.

Section 536.4(2) *Criminal Code*

Docket Number _____

This document when completed and filed will be attached to the Information by the Clerk

NOTE: PLEASE PRINT LEGIBLY

Form "C"

**AGREEMENT AND ADMISSIONS AT HEARING HELD UNDER SECTION 536.4
CRIMINAL CODE**

Name of Accused [*Young Person*] _____

The next appearance of the Accused [*Young Person*] is the ____ day of _____
20____, at _____ o'clock AM/PM, Courtroom # _____ at _____ in the Province
of Alberta.

Charges: _____

The Prosecutor and the Accused [*Young Person*] agree to limit the scope of the preliminary
inquiry to the following specific issues:

The Prosecutor and the Accused [*Young Person*] agree to the following admissions:

Signature: _____

Print Name legibly: _____

Contact information (all required):

Address: _____

Phone No. _____

Fax No. _____

Counsel for the Accused [*Young Person*]

Signature: _____

Print Name legibly: _____

Contact information (all required):

Address: _____

Phone No. _____

Fax No. _____

Prosecutor

Pursuant to s. 536.4(2) of the *Criminal Code* I recorded the above agreement to limit the scope of the preliminary inquiry and admissions of fact by the terms herein recorded.

Signature: _____

Print Name legibly: _____

Judge of the Provincial Court of Alberta

Dated this _____ day of _____, 20__ at _____ in the Province of Alberta

Note: This agreement will be filed with the Clerk of the Court by the judge presiding at the s. 536.4 hearing.

Section 536.5 *Criminal Code*

Docket Number _____

This Agreement when completed and filed will be attached to the Information by the Clerk

NOTE: PLEASE PRINT LEGIBLY

Form "D"

MUTUAL AGREEMENT TO LIMIT SCOPE OF PRELIMINARY INQUIRY

Name of Accused [*Young Person*] _____

The next appearance of the Accused [*Young Person*] is the ____ day of _____
20____, at _____ o'clock AM/PM, Courtroom # _____ at _____ in the Province
of Alberta.

Charges:

The Prosecutor and the Accused [*Young Person*] agree to limit the scope of the preliminary
inquiry to the following specific issues, and make this agreement pursuant to s. 536.5:

Was there a hearing held pursuant to s. 536.4?

No: _____

Yes _____ [date: _____]

Dated this _____ day of _____, 20__ at _____ in the Province of Alberta

Signature: _____

Print Name legibly: _____

Contact information (all required):

Address: _____

Phone No. _____
Fax No. _____
Counsel for the Accused [*Young Person*]

Signature: _____
Print Name legibly: _____
Contact information (all required):
Address: _____

Phone No. _____
Fax No. _____
Prosecutor

Note: This agreement must be filed with the Clerk of the Court.