

IN THE TERRITORIAL COURT OF YUKON

PRACTICE DIRECTION #4

*Preliminary Hearings
Amendments to the Criminal Code
Effective date: June 1, 2004*

BACKGROUND INFORMATION

Amendments to the *Criminal Code of Canada* regarding Preliminary Inquiries came into force on June 1, 2004. The procedural amendments are retroactive. All amendments apply to elections made after June 1, 2004.

These amendments make the following changes:

1. No Preliminary Inquiry unless requested (s. 535, s. 536(2), s. 536.2, s. 536(4), s. 536(4.3) and s. 536(4.1)(a), (b).
2. Mandatory Statement of Issues and Witnesses (s. 536.3).
3. Conference or Hearing prior to Preliminary Inquiry (s. 536.4).
4. Scope of Preliminary Inquiry may be limited (s. 536.3, s. 536.4, s. 536.4(2), s. 536.5).
5. Evidentiary amendments (s. 540(7), (8) and (9)).
6. Conduct of Preliminary Inquiry (s. 537(1)(i), s. 537(1.1)).
7. Absence of accused (s. 537(1)(j)).
8. Committal upon limited evidence (s. 549(1.1), s. 536.5).

CHANGE IN PROCEDURES

- Form of election that the clerk reads to the accused has changed. It now reads:

You have the option to elect to be tried by a territorial court judge without a jury and without having had a preliminary inquiry; (or you may elect to be tried by a supreme court judge without a jury) or you may elect to be tried in supreme court by a court composed of a judge and jury. If you do not elect now, you are deemed to have elected to be tried in supreme court by a court composed of a judge and jury. If you elect to be tried by a supreme court judge without a jury or in supreme court by a court composed of a judge and jury, or if you are deemed to have elected to be tried by a court composed of a judge and jury, you will have a preliminary inquiry only if you or the prosecutor requests one. How do you elect to be tried?

- If the accused elects to be tried in the Supreme Court and either the accused or the Crown wants a preliminary inquiry, they must now request a preliminary inquiry within a time period fixed by the presiding judge/justice.

- The Information (and, if applicable, the warrant of remand) must be endorsed with the election and must also note whether the accused or the Crown has requested an inquiry.
- The election may now be made in writing without the appearance of the accused.

APPEARANCES IN JUSTICE OF THE PEACE COURT

- When an accused who is represented by counsel appears before a Justice of the Peace, elects to be tried in the Supreme Court and it is confirmed by counsel that neither party is requesting a preliminary inquiry, the Justice of the Peace may adjourn the matter directly to the next Supreme Court fix-date.
- When an accused who is self-represented appears before a Justice of the Peace and elects to be tried in the Supreme Court, the Justice of the Peace shall adjourn the matter to the next available judges' docket for determination as to whether or not a preliminary inquiry will be held.
- In the accused elects to be tried by the Supreme Court, but the parties are not prepared to make a decision with respect to requesting a preliminary inquiry, the Justice of the Peace shall adjourn the matter for a period of approximately two weeks to a Judges' docket.
- If the accused elects to be tried by the Supreme Court and is requesting a preliminary inquiry, the Justice of the Peace shall adjourn the matter for a period of approximately two weeks to a Judges' docket in order to fix the date for the preliminary inquiry.

FORM "A" – STATEMENT IDENTIFYING ISSUES & WITNESSES

- If the Crown or counsel for the accused requests a preliminary inquiry, that party shall file a statement of issues and witnesses. That statement is to be filed with the trial coordinator prior to the appearance in Judges' docket to fix the date for the preliminary inquiry.
- Self-represented accused are not required to complete Form A.

FORM "B" – REQUEST FOR PRE-HEARING CONFERENCE

- The Crown or the accused can apply for a hearing (*hereinafter referred to as a "pre-hearing conference"*) to assist the parties in identifying the issues, witnesses or any other matter that would promote a fair and expeditious inquiry.
- This application must be made to the judge who will preside at the preliminary inquiry.

- The judge scheduled to preside at the preliminary inquiry is empowered to order a pre-hearing conference on his or her own motion.
- The party making the application shall file a Form "B" with the trial coordinator.
- The trial coordinator will forward the application to the judge scheduled to preside at the preliminary inquiry. The trial coordinator will provide the parties with a copy of Form "B" after the judge has endorsed his or her decision with respect to the application.
- In the event that a pre-hearing conference is ordered, the trial coordinator will set a date for the conference, in consultation with the parties.
- It should be noted that although the order for a pre-hearing conference must be made by the judge who will preside at the preliminary inquiry, the actual conference itself can be presided over by any judge of the court. The trial coordinator shall make every effort to schedule the pre-hearing conference before the judge who will preside at the preliminary inquiry.

FORM "C" – AGREEMENT & ADMISSIONS AT PRE-HEARING CONFERENCE

- When all accused are represented by counsel, the pre-hearing conference will generally take place in chambers or by teleconference. If any of the accused are self-represented, the conference shall take place in open court.
- All admissions of fact or agreement made by the parties at a pre-hearing conference shall be endorsed on Form "C", which will be signed by the parties as well as the presiding judge. Form "C" will be formally filed with the court.

FORM "D" – MUTUAL AGREEMENT TO LIMIT SCOPE OF PRELIMINARY INQUIRY

- Whether or not a pre-hearing conference is held, the Crown and the accused may agree to limit the scope of the preliminary inquiry to specific issues. In that event, the parties shall complete Form "D" and formally file same with the court.

Chief Judge Faulkner
March 21, 2006

FORM "A"
STATEMENT IDENTIFYING ISSUES AND WITNESSES

Section 536.3 Criminal Code

R v _____

Information # _____

Charges: _____

Next court appearance: _____

Is disclosure by the Crown complete?

Yes _____

No _____

Has a pre-plea discussion taken place between Defence and Crown Counsel?

Yes _____

No _____

The requesting party requires evidence to be given only on the following issues:

The requesting party wishes to hear only the following witnesses at the inquiry:

Name, address and phone number of
requesting party:

Signature of requesting party

FORM "B"
REQUEST FOR PRE-HEARING CONFERENCE

Section 536.4(1) Criminal Code

R v _____

Information # _____

Charges: _____

Next court appearance: _____

I, hereby request a pre-hearing conference pursuant to s. 536.4(1) of the Criminal Code.

Reasons: *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":

Name, address and phone number of requesting party:

Signature of requesting party

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

Judge of the Territorial Court of Yukon

FORM "C"
AGREEMENT AND ADMISSIONS AT PRE-HEARING CONFERENCE
Section 536.4(2) Criminal Code

R v _____

Information # _____

Charges: _____

Next court appearance: _____

The prosecutor and the accused agree to limit the scope of the preliminary inquiry to the following specific issues:

The prosecutor and the accused agree to the following admissions:

Signature of prosecutor

Signature of counsel for the accused

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.

Date

Judge of the Territorial Court of Yukon

FORM "D"
MUTUAL AGREEMENT TO LIMIT SCOPE OF PRELIMINARY INQUIRY
Section 536.5 Criminal Code

R v _____ Information # _____

Charges: _____

Next court appearance: _____

The prosecutor and the accused agree to limit the scope of the preliminary inquiry to the following specific issues, and make this agreement pursuant to s. 536.5:

Dated this _____ day of _____, 20 ____ at _____, in the
Yukon Territory.

Signature of prosecutor

Signature of counsel for the accused