

PRACTICE NOTE

NOTICE TO THE PROFESSION from the PROVINCIAL COURT OF PRINCE EDWARD ISLAND

PRELIMINARY INQUIRIES, and AMENDMENTS TO THE CRIMINAL CODE

Amendments to the Criminal Code regarding preliminary inquiries took effect as of June 1, 2004. Although the amendments do not prescribe any particular forms, many of the provinces have developed standard forms for the profession to use, for the convenience of counsel and to ensure that the court has all of the information required by the new provisions.

Attached you will find six forms that I, in consultation with the other members of the Provincial Court of Prince Edward Island, have approved for use in this province.

Section 536.2 now provides that an election or a re-election may be made by written submission, rather than requiring the accused person to attend in person. A Notice of Election by Written Submission and a Notice of Re-election and Consent to Re-election are attached.

Regardless of whether the accused is in court making the election, or only the counsel is present, (where the accused elects by written submission), the amendments provide that there will only be a preliminary inquiry where the accused or the Crown requests one. Section 536.3 requires that the party requesting a preliminary inquiry must identify the issues and witnesses that party wants called. **Form "A"- Counsel Statement Identifying Issues and Witnesses** - must be completed and filed with the Provincial Court before a date for the preliminary inquiry will be set. This should be filed with the Court at the time the election is made. If it is not filed at that time, the Court will adjourn the matter to the next docket day for Form A to be filed, and only then will the date for the preliminary inquiry be set.

Form B- Request for Hearing pursuant to Section 536.4(1) Criminal Code. If there is a dispute between the Crown and the accused as to the issues or witnesses to be heard at the preliminary inquiry, then either party can request a hearing. Form B must be filed with the Court before the Court will consider a request for a hearing under Section 536.4(1) C.C.C.

Form C - Agreement and Admissions at Hearing held under section 536.4 CCC - this form is used to record any agreements reached by counsel at a hearing held pursuant to section 536.4. It is filed with the Court and forms part of the record of the preliminary inquiry.

Form D - Mutual Agreement to Limit Scope of Preliminary Inquiry - Section 536.5 Criminal Code - This form would be used in situations where, at the outset, there is an agreement between counsel to limit the scope of the preliminary inquiry, and as such it would be filed at the time of the election, and instead of Form A. The second situation in which Form D would be used is after Form A has been filed, the date for the preliminary inquiry is set, and then both counsel reach an agreement to limit the scope of the preliminary inquiry. The amendments provide specific directions as to how the court is to consider the matters not in dispute at the preliminary inquiry.

A copy of the six forms is enclosed for your assistance and information. These forms will soon be available on the Provincial Court Website: <http://www.gov.pe.ca/courts/provincial/>.

Dated at Charlottetown, Prince Edward Island this 9th day of July, 2004.

Chief Judge John R.A. Douglas

enclosures (6 forms)
cc. Provincial Court Judges
Provincial Court Clerks