

PRACTICE DIRECTIVE 11  
PRE-HEARING CONFERENCES

Preliminary Inquiries and Trials [Code, s. 625.1; s. 536.4; s. 536.5]

APPLICATION OF THE PRACTICE DIRECTIVE

RESOLUTION CONFERENCES (*Code* s. 625.1)

**11.01(1)** For all matters set for preliminary inquiry of two or more days, or where a preliminary inquiry has been the subject of a s. 536.4(1) (focus hearing) upon application by either the accused or the prosecutor, a resolution conference shall be held at such time and date, and in such place and manner, as a judge of the court may direct.

**11.01(2)** For all other preliminary inquiries, either at the request of counsel or on the court's own motion, a judge of the court may direct that a resolution conference be held.

ATTENDANCE OF COUNSEL AND ACCUSED

**Attendance at Conference**

**11.02(1)** Prior to attending at the resolution conference, the party requesting same must have filed Form A (identifying witnesses and issues) in court at the time the preliminary inquiry was set, or as directed by the court.

**11.02(2)** The prosecutor and counsel for the accused, who are each to be fully briefed in respect of the issues to be discussed at the resolution conference, shall be present at the resolution conference, unless otherwise ordered by a judge and in the case of an accused who is not represented by counsel, the accused shall be present.

**Completion in Draft of Pre-Conference Report**

**11.02(3)** Prior to attending the resolution conference, the prosecutor and counsel for the accused may jointly prepare in draft a pre-hearing conference report in Form 10 to be presented to the resolution conference judge.

## THE HEARING

### **General Nature of Resolution Conference**

**11.03(1)** Unless otherwise ordered by the resolution conference judge, a resolution conference shall be an informal meeting conducted in chambers at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any further proceedings that may take place.

**11.03(2)** A resolution conference judge will not preside at a hearing pertaining to any matters that were the subject of the resolution conference unless the matter is resolved, all parties request that the resolution conference judge preside, and the judge agrees to preside.

### **Specific Inquiries to be Made**

**11.03(3)** Without restricting the generality of 11.03(1), a resolution conference judge may inquire as to:

- (a) the extent of disclosure made by the prosecutor and any or further requests for disclosure by an accused or counsel for an accused;
- (b) the nature and particulars of any applications to be made before or at the outset of the preliminary inquiry proceedings including an:
  - (i) application to quash an Information;
  - (ii) application to change the venue or adjourn the hearing of the preliminary inquiry;
  - (iii) application to challenge the sufficiency of the Information, to order particulars or to amend the Information or any count therein;
  - (iv) application to sever the trial of any count(s) or accused from the trial(s) of another or others of them; and
  - (v) application to determine the fitness of an accused to stand trial;
- (c) the identification and simplification of such issues as remain to be contested at the preliminary inquiry;
- (d) the identification of witnesses to be heard at the inquiry, taking into account the witnesses' needs and circumstances;
- (e) the possibility of obtaining admissions and agreements so as to facilitate an expeditious, fair and just determination of the proceedings;
- (f) the estimated duration of the preliminary inquiry proceedings;
- (g) the advisability of fixing the hearing date, in the event that a hearing date has not been set for any reason;
- (h) any application to be made at the preliminary inquiry pursuant to s. 540(7) of the *Code*;
- (i) any other matter that may assist in promoting a fair, just and expeditious hearing; and
- (j) the possibility of resolving the matter before trial.

## **Resolution Conference Orders**

**11.04** At the conclusion of a resolution conference, the resolution conference judge may:

- (a) adjourn and order a continuation of the resolution conference, and in conjunction with counsel and the trial coordinator, fix the date, time, and place for the conference to be continued;
- (b) give counsel directions regarding further steps to be taken or information to be obtained and set dates for such directions to be met;
- (c) if he or she deems it necessary, cancel, abridge or add to scheduled preliminary inquiry dates to ensure that the time set aside is appropriate and to facilitate compliance with the Practice Directives;
- (d) order that certain preliminary motions be heard in advance of the preliminary inquiry date, and, in conjunction with counsel and the trial coordinator, fix dates for the motion to be heard in advance by the assigned preliminary inquiry judge;
- (e) if counsel for the accused or the prosecutor makes or renews application for a s. 536.4 focus hearing following the completion of the resolution conference, or the judge conducting the resolution conference concludes that a focus hearing may be required, forward a request to the judge before whom the preliminary inquiry is to be held for a determination as to whether to order a focus hearing pursuant to s. 536.4 of the *Code*; and
- (f) once all resolution conference meetings are completed, prepare a resolution conference report in Form 10, a copy of which shall be provided to the prosecutor and counsel for the accused, or the accused if he or she is not represented by counsel, and which may be provided to the preliminary inquiry judge together with any relevant documents.

## FOCUS HEARINGS (*Code*, s. 536.4)

**11.05(1)** Upon completion of a resolution conference, and upon application by the prosecutor, counsel for the accused, or on the judge's own motion, the judge before whom a preliminary inquiry is to be held may order that a hearing (focus hearing) be held pursuant to s. 536.4 of the *Code*, at such time and date, and in such place and manner, as the judge may direct.

### ATTENDANCE OF COUNSEL AND ACCUSED

#### **Attendance at Conference**

**11.06(1)** Prior to attending at the focus hearing, the requesting party must have filed Form A (identifying witnesses and issues) in court at the time the preliminary inquiry was set, or as the court directed.

**11.06(2)** The prosecutor and counsel for the accused, who are each to be fully briefed in respect of the issues to be discussed at the focus hearing, shall be present at the focus hearing, unless otherwise ordered by a judge and in the case of an accused who is not represented by counsel, the accused shall be present.

#### **Completion in Draft of Pre-Conference Report**

**11.06(3)** Prior to attending the focus hearing, the prosecutor and counsel for the accused may jointly prepare in draft a pre-hearing conference report in Form 10 to be presented to the focus hearing judge.

### THE HEARING

#### **General Nature of a Focus Hearing**

**11.07(1)** Unless otherwise ordered by the hearing judge, a focus hearing shall be an informal meeting conducted in chambers at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any further proceedings that may take place..

#### **Specific Inquiries to be Made**

**11.07(2)** Without restricting the generality of 11.07(1), a judge conducting a focus hearing pursuant to s. 536.4 of the *Code* may inquire as to those matters set out in 11.03(3).

**11.07(3)** Any admissions of fact or agreements reached at a focus hearing shall be recorded in Form B by the judge conducting the hearing.

**11.07(4)** An application to be made at the preliminary inquiry pursuant to s. 540(7) of the *Code* shall be identified at the focus hearing, and if contested, shall be filed on Form 10 and heard on the record within the time period directed by the judge presiding at the focus hearing.

## **Focus Hearing Orders**

- 11.08** At the conclusion of a focus hearing, the focus hearing judge may:
- (a) adjourn and continue the focus hearing to such further dates, times and places as the judge may direct;
  - (b) give counsel directions regarding further steps to be taken or information to be obtained and set dates for such directions to be met;
  - (c) if he or she deems it necessary, cancel, abridge or add to scheduled preliminary inquiry dates to ensure that the time set aside is appropriate and to facilitate compliance with the Practice Directives;
  - (d) order that certain preliminary motions be heard in advance of the preliminary inquiry date, and, in conjunction with counsel and the trial coordinator, fix dates for the motion to be heard in advance by the assigned preliminary inquiry judge; and
  - (e) once all focus hearing meetings are completed, prepare a focus hearing report in Form 10, a copy of which shall be provided to the prosecutor and counsel for the accused, or the accused if he or she is not represented by counsel.

## PRE-TRIAL CONFERENCES [*Code*, s. 625.1]

**11.09(1)** For all matters set for a trial of two or more days, a pre-trial conference shall be held at such time and date, and in such place and manner, as a judge of the court may direct.

**11.09(2)** For all other trials, any counsel may request a judge of the court to direct that a pre-trial conference be held.

## ATTENDANCE OF COUNSEL AND ACCUSED

### **Attendance at Conference**

**11.10(1)** The prosecutor and counsel for the accused, who are each to be fully briefed in respect of the issues to be discussed at the pre-trial conference, shall be present at the pre-trial conference, unless otherwise ordered by a judge and in the case of an accused who is not represented by counsel, the accused shall be present.

### **Completion in Draft of Pre-Trial Report**

**11.10(2)** Prior to attending the pre-trial conference, the prosecutor and counsel for the accused may jointly prepare in draft a pre-trial conference report in Form 10 to be presented to the pre-trial conference judge.

## THE HEARING

### **General Nature of Conference**

**11.11(1)** Unless otherwise ordered by the pre-trial conference judge, a pre-trial conference shall be an informal meeting conducted in chambers at which a full and free discussion of the issues raised may occur without prejudice to the rights of the parties in any further proceedings that may take place.

**11.11(2)** A pre-trial conference judge will not preside at a hearing pertaining to any matters that were the subject of the pre-trial conference unless the matter is resolved, all parties request that the pre-trial conference judge preside and the judge agrees to preside.

### **Specific Inquiries to be Made**

**11.11(3)** Without restricting the generality of 11.11(1), a pre-trial conference judge may inquire as to any of the matters referred to in 11.03(3).

### **Pre-Trial Conference Orders**

**11.12** At the conclusion of a pre-trial meeting, the pre-trial conference judge may:

- (a) adjourn and order a continuation of the pre-trial conference and, in conjunction with counsel and the trial co-ordinator, fix the date, time and place for the conference to be continued;
- (b) give counsel directions regarding further steps to be taken or information to be obtained and set dates for such directions to be met;
- (c) if he or she deems it necessary, cancel, abridge or add to scheduled trial dates to ensure that the time set aside is appropriate and to facilitate compliance with the Practice Directives;
- (d) order that certain preliminary motions be heard in advance of the trial date, and, in conjunction with counsel and the trial coordinator, fix dates for the motion to be heard in advance by the assigned trial judge;
- (e) if the matter concerns an application for *Charter* relief other than an application to exclude evidence, in conjunction with counsel and the trial coordinator, fix motion dates and trial dates; and
- (f) once all pre-trial conference meetings are completed, prepare a pre-trial conference report in Form 10, a copy of which shall be provided to the prosecutor and counsel for the accused, or the accused if he or she is not represented by counsel, and which may be provided to the trial judge together with any relevant documents.