

PRACTICE DIRECTIVE

Recent amendments to the Criminal Code of Canada state:

536.4 (1) The justice before whom a preliminary inquiry is to be held may order, on application of the prosecutor or the accused or on the justice's own motion, that a hearing be held, within the period fixed by rules of court made under section 482 or 482.1 or, if there are no such rules, by the justice, to

- (a) assist the parties to identify the issues on which evidence will be given at the inquiry;
- (b) assist the parties to identify the witnesses to be heard at the inquiry, taking into account the witnesses' needs and circumstances; and
- (c) encourage the parties to consider any other matters that would promote a fair and expeditious inquiry.

Agreement to be recorded -- s. 536.4(2)

(2) When the hearing is completed, the justice shall record any admissions of fact agreed to by the parties and any agreement reached by the parties.

Agreement to limit scope of preliminary inquiry -- s. 536.5

536.5 Whether or not a hearing is held under section 536.4 in respect of a preliminary inquiry, the prosecutor and the accused may agree to limit the scope of the preliminary inquiry to specific issues. An agreement shall be filed with the court or recorded under subsection 536.4(2), as the case may be.

As a result, the following procedures will apply in the Provincial Court of Manitoba:

The party requesting the preliminary hearing must file Form "A" (identifying issues and witnesses) in court when the preliminary inquiry is set.

Where a preliminary inquiry is scheduled for hearing for two or more days, or has been the subject of a s. 536.4(1) "focus hearing" application by either the accused or the Crown, a "resolution conference" will be ordered by the Court. (see Appendix 'A' to attached Notice to the Bar for definitions of "resolution conference" and "focus hearing").

A resolution conference will be scheduled in court at the time of the setting of the preliminary hearing date, and will be before the Duty Judge in Chambers.

Following the completion of the resolution conference, if either defence counsel or the Crown makes or renews application for a focus hearing, or the Judge conducting the resolution conference is of the view that a focus hearing is required, that application/assessment will go to the judge before whom the preliminary inquiry is to be held for a determination as to whether to order the focus hearing.

If admissions of fact or agreements have been reached by the parties, either at the time that the preliminary inquiry is scheduled, or at the conclusion of a resolution conference or focus hearing, Form “B” (agreements and admissions of fact) is to be filed with the Clerk of the Court.

If a hearing is not held pursuant to s. 536.4, the Crown and counsel for the accused may agree to limit the scope of the preliminary inquiry to specific issues. Form “B” is to be used and filed with the Clerk of Court.

Pre-Trial Hearings will continue to be ordered with respect to matters proceeding to trial in the Provincial Court, where either the trial is scheduled for two or more days, or at the discretion of the Court based on an application by the accused or the Crown.