Provincial Court of Alberta

Practice Notes

Provincial Court Practice Note "1"

Notice to the Profession

Case Management – Early Case Management

The Provincial Court of Alberta is implementing an Early Case Resolution Programme across the Province of Alberta effective March 1, 2002.

On May 21, 2000 the Chief Judge struck a committee under the Chairmanship of Assistance Chief Judge J.A. Wood. The members included Assistant Chief Judges Brian Stevenson and Peter Caffaro, representatives of the Law Society of Alberta, the Alberta Branch of the Canadian Bar Association, policing agencies (Chiefs of Edmonton, Calgary and Lethbridge City and Assistant Commissioner RCMP), Chief Crown Prosecutors (Edmonton, Calgary, Lethbridge and Senior Federal Prosecutors Edmonton and Calgary), the Legal Aid Society of Alberta and the Assistant Deputy Minister of the Department of Justice. The Committee met throughout the next 10 months, reaching a draft position in March 2001. The Committee then consulted with members of the Bar and Crown counsel in Lethbridge, Medicine Hat, Calgary, Red Deer, Wetaskiwin, Edmonton and Grande Prairie. A unanimous final report was presented to Chief Judge E.J.M. Walter in early July, 2001.

The Programme addresses issues being considered in other parts of Canada and which has been tested in a pilot programme in Southern Alberta since 1996. The initiative represents best a practical approach to early case resolution for all participants in the criminal justice system which will enhance the administration of justice in Alberta.

The purpose of early case resolution is to provide Defence and Crown Counsel an opportunity to address critical issues at the early stages of criminal proceedings. Upon a first appearance with their client, Defence Counsel will be given sufficient time to obtain timely disclosure, meet with their client and receive instructions, meet with Crown Counsel, and assess and determine a direction prior to election and or plea. Counsel will be able to determine at a much earlier stage the direction they wish to have their matter proceed. This is intended to reduce or avoid costly adjournments. A corresponding benefit will accrue to timing and scheduling of all matters before the courts. We expect Defence Counsel will find early resolution is in their client's interests and will reduce the amount of time spent in court appearances. Early case resolution can significantly reduce the number of trials being booked as well as the trial collapse rate. Such reductions result in a benefit to the public, counsel, police

and witnesses by ensuring their time is better considered and not inconvenienced.

This initiative has the ability to provide a more productive and effective operation of the court for all users, and reduce the demand on critical resources. The support of each of the stakeholders in the justice system is necessary to achieve expected results. Enhanced quality of service is a benefit to all users. However, nothing in this programme will diminish the rights of those appearing before the court.

A review of this programme will be undertaken by the committee before the end of the 2002-2003 fiscal year. That review will incorporate meetings with all stakeholders to consider changes, alterations or adjustments needed to ensure this programme continues to provide the benefits sought for each of the partners in the system.

Practice Rules – Early Case Resolution

[1] These rules apply to matters where counsel represents the accused.

[2] Reference to 'parties' is a reference to Crown and Defence Counsel.

[3] When Defence counsel first appears in court with respect to an information alleging an offence or offences, the court may adjourn the matter for a period of time, not exceeding six weeks ("Resolution Adjournment").

[4] During the Resolution Adjournment the parties will attend to the following matters:

a. Crown Counsel will as soon as practicable effect disclosure of the case for the prosecution to Defence Counsel.

b. Defence Counsel will arrange to meet with a Crown Counsel.

c. The Crown will apply such resources as to be able to accommodate consultation requests from Defence Counsel.

d. The parties will meet to determine whether the matter may proceed to resolution or trial, and in the case of a trial, whether any matters can be resolved prior to trial.

[5] The parties may mutually request a further adjournment, on grounds that a resolution may be obtained, or that witnesses or trial time may otherwise be reduced.

[6] Where a trial is scheduled, either party, or the court on its own motion, may refer the matter to the court for a pre-trial conference.

[7] In the context of trial scheduling the parties will make all reasonable efforts to ensure that all matters necessary for the conduct of the trial as scheduled are in order.

[8] Should any circumstances change prior to the trial date, that party shall forthwith advise the opposite party and the court, and schedule an appearance as soon as practicable to apply for a trial adjournment.

Provincial Court Practice Note "2"

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 *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 document 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.

Provincial Court Practice Note "3"

"Criminal Division" and "Family & Youth Division"

Notice to the Profession

Publication Bans (#2)

1. **This Practice Note is in effect as of February 1, 2005** and applies to proceedings conducted in the Criminal Division and in the Family & Youth Division of The Provincial Court of Alberta. This Note supersedes any previous Practice Note in relation to this topic.

2. This Practice Note applies to members of the Law Society of Alberta who intend to apply for a court Order which restricts public access to, or the media's ability to fully report on, court documents or proceedings (made pursuant to a judge's common law or legislated discretionary authority) and includes without limitation restrictions on publication or rights of access, such as:

   a. Publication bans under s.486 of the Criminal Code;

   b. Orders which partially, or completely, seal evidence taken in such proceedings, excepting, those matters which pertain to the signing of general search warrants, special warrants, assistance Orders and matters related thereto;

   c. Use of pseudonyms;

   d. *In Camera* Orders;

   e. Orders restricting access to and copying of exhibits; and

   f. Orders permitting witnesses or participants in judicial proceedings to testify in a manner that would prevent their identification, under s.486 of the Criminal Code.

3. This Practice Note does not apply to any mandatory statutory publication bans or mandatory Orders, (including without limitation those authorized pursuant to the Criminal Code).

4. "Interested Parties" includes the parties to the proceedings. Any electronic or print media representative who wishes to receive notice pursuant to this Practice Note may register as an "interested party." In order for an electronic or print media representative to register:

   a. such media representative must name a member of the Law Society of Alberta to receive notice on behalf of the media representative; and

b. provide and maintain a current email address for such member of the Law Society, which email address shall be utilized in providing notice in accordance with paragraphs 8 & 9.

5. On application to the Court, any other person may be named an interested party.

6. Except with leave of the Court, counsel, on behalf of an accused, a witness or a justice system participant (as referred to in s.486 of the Criminal Code) **must** file a written copy of the Notice of the Application and provide the notice required pursuant to paragraphs 8 & 9 hereof at least **three clear days** before the beginning of the trial, application or proceeding or matter to which the ban or Order is to apply. In appropriate circumstances, the Court may direct that notice of any Application be given to such additional parties as the Court deems necessary.

   In completing the Notice of Application required pursuant to paragraphs 8 & 9 hereof, any party applying must provide a description sufficient to provide recipients of the notice with an understanding of the nature of the intended application.

7. The application must be made to the judge assigned to hear the case. If that judge is unknown or unavailable, the application must be made to the case management judge. If there is no case management judge, the application must be made before the Chief Judge, an Assistant Chief Judge, or their respective designate.

8. Unless otherwise ordered, the application must be on notice to Interested Parties, including any electronic or print media representative who has registered as an "interested party" in accordance with this Practice Note. The Applicant may apply to the Court for further directions as to the parties to be served and the manner of service.

9. Unless otherwise ordered by the Court, notice to the electronic or print media who are registered as an "interested party" must be given by completing and submitting the notice prescribed in Form "A" on:

   a. the Alberta Courts web site (www.albertacourts.ab.ca) and linking to Provincial Court – Criminal - Publication Bans (or Provincial Court – Criminal - Electronic filing of Notice of Application for Publication Ban (Practice Note & online form)). If such web site is not accessible, notice must be given by email or fax to media who have provided a fax number or an email address to the Clerk of the Court for the purpose of receiving such notice, **and**

   b. at a place reserved for posting notice at the court location where the application will be made.

10. Access to the above website will be "by password only," and such password(s) as may be required will be provided to members of the Law

Society of Alberta in the manner directed by the Chief Judge, or his/her designate.

11. Any person or entity who is not a party to the proceedings, and who claims an interest in the proceedings must apply to the Court for standing to be heard at the application.

Sealing / Unsealing Court Files

12. An application to seal the entire court file, or an application to set aside a sealing order, must be made to the Chief Judge, an Assistant Chief Judge, or their respective designate, who may make such directions as to the parties to be served, the time for and the manner of service of notice which, in their discretion, they determine to be appropriate.

DATED this 12th day of January, 2005.

The Honourable E.J.M. Walter
Chief Judge of the Provincial Court of Alberta

Provincial Court Practice Note "4"

Provincial Court of Alberta

Notice to the Profession

Courtroom Video Link Appearances

Use of Video Conference in Criminal Proceedings

Introduction

The Chief Judge of the Provincial Court of Alberta issues the hereinafter Video Link Practice Note to enhance the administration of justice.

Commencing July 4th, 2006, video link shall be used at each of the following Court and Remand locations to conduct judicial interim release hearings, appearances, enter pleas, hear applications and receive submissions as provided by the following Criminal Code provisions in addition to such other matters as the presiding Judge may allow:

Sherwood Park	Lethbridge
Breton	Taber
Edmonton Criminal	Fort Macleod
Edmonton Youth	Westlock
High Level	Pincher Creek
Assumption	Cardston
Fort Vermilion	Medicine Hat
Fort McMurray	Brooks
Fort Chipewyan	Red Deer
Peace River	Rimbey
Fairview	Rocky Mountain House
Falher	Stettler
Red Earth Creek	Drumheller
Slave Lake	Strathmore
Wabasca/Desmarais	Grande Prairie
Ponoka	Vermilion
Valleyview	Lloydminster
Vegreville	High Prairie
Drayton Valley	Wainwright
Lac La Biche	Leduc
Boyle	Camrose
Evansburg	Wetaskiwin
Whitecourt	St. Paul
Hinton	Bonnyville
Edson	Cold Lake
Jasper	Stony Plain
Fort Saskatchewan	Edmonton Young Offender Centre
St. Albert	Calgary Young Offender Centre
Athabasca	Edmonton Remand Centre
Barrhead	Calgary Criminal
Morinville	Calgary Youth

The Court shall (subject to the Court directing otherwise) require all persons in custody to appear in these locations by video link for:

a. judicial interim release hearings
b. adjournment applications
c. entry of elections and/or not guilty pleas and the scheduling of a preliminary hearing or trial.

At this time, persons in custody will not be required to appear by video link where:

a. the evidence of a witness will be taken at the hearing, or
b. the Court is unable to conclude that the accused understands the proceedings and can make voluntary decisions during the proceedings, or
c. the accused has filed a designation with the court (subject to other Court direction)

Guilty pleas may be entered and sentencing hearings conducted by video link with the consent of the Court and the parties.

Relevant Criminal Code Sections

1. **To receive evidence of "vulnerable" witnesses**
   s.486(2.11) and (2.2)

   s.(2.101) Testimony outside court room - Notwithstanding section 650, where an accused is charged with an offence referred to in subsection (2.102), the presiding judge or justice, as the case may be, may order that any witness testify

   a. outside the court room, if the judge or justice is of the opinion that the order is necessary to protect the safety of the witness; and
   b. outside the court room or behind a screen or other device that would allow the witness not to see the accused, if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness.

   s.486(2.11) Same procedure for opinion - Where the judge or justice is of the opinion that it is necessary for the complainant or witness to testify in order to determine whether an order under subsection (2.1) or (2.101) should be made in respect of that complainant or witness, the judge or justice shall order that the complainant or witness testify pursuant to that subsection.

   s.486(2.2) Condition of exclusion - A complainant or witness shall not testify outside the court room pursuant to subsection (2.1), (2.101) or (2.11) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the complainant or witness by means of closed-circuit television or otherwise, and the accused is permitted to communicate with counsel while watching the testimony.

2. **Judicial interim release hearings**

   Unless otherwise arranged by counsel, persons in custody who have filed a designation of counsel under s. 650.01 (1) are not required to appear by video link unless otherwise directed by the Court. Where a designation is not filed, then persons in custody shall appear by video link for judicial interim release applications.

   s.515(2.2) and (2.3)

   s.515(2.2) Alternative to physical presence - Where, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the appearance shall be by actual physical attendance of the accused but the justice may, subject to subsection (2.3), allow the accused to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice.

s.515(2.3) Where consent required - the consent of the prosecutor and the accused is required for the purposes of an appearance if the evidence of a witness is to be taken at the appearance and the accused cannot appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication.

3. Preliminary Inquiries
s.537(j), (j.1) and (k)

s.537(j) Where the prosecutor and the accused so agree, permit the accused to appear by counsel or by closed-circuit television or any other means that allows the court and the accused to engage in simultaneous visual and oral communication, for any part of the inquiry other than a part in which the evidence of a witness is taken.

s.537(j.1) Permit, on the request of the accused, that the accused be out of court during the whole or any part of the inquiry on any conditions that the justice considers appropriate; and

s.537(k) For any part of the inquiry other than a part in which the evidence of a witness is taken require an accused who is confined in prison to appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, if the accused is given the opportunity to communicate privately with counsel, in a case in which the accused is represented by counsel.

4. Entering of Plea
s.606(5)

s.606(5) Video links - For greater certainty, subsections 650(1.1) and (1.2) apply, with any modifications that the circumstances require, to pleas under this section if the accused has agreed to use a means referred to in those subsections.

5. To facilitate appearances by designated counsel and the prosecutors
s.650 (.01), (.02), (1.1) and (1.2)

s.650.01(1) Designation of counsel of record - An accused may appoint counsel to represent the accused for any proceedings under this Act by filing a designation with the court.

s.650.01(2) Contents of designation - The designation must contain the name and address of the counsel and be signed by the accused and the designated counsel.

s.650.01(3) Effect of designation - If a designation is filed,

(a) the accused may appear by the designated counsel without being present for any part of the proceedings, other than

(i) a part during which oral evidence of a witness is taken,
(ii) a part during which jurors are being selected, and
(iii) an application for a writ of *habeas corpus*;

(b) an appearance by the designated counsel is equivalent to the accused's being present, unless the court orders otherwise; and

(c) a plea of guilty may be made, and a sentence may be pronounced, only if the accused is present, unless the court orders otherwise.

s.650.01(4) When court orders presence of accused - If the court orders the accused to be present otherwise than by appearance by the designated counsel, the court may

(a) issue a summons to compel the presence of the accused and order that it be served by leaving a copy at the address contained in the designation; or

(b) issue a warrant to compel the presence of the accused.

s.650.02 Technological appearance - The prosecutor or the counsel designated under section 650.01 may appear before the court by any technological means satisfactory to the court that permits the court and all counsel to communicate simultaneously.

s.650(1.1) Video links - Where the court so orders, and where the prosecutor and the accused so agree, the accused may appear by counsel or by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, for any part of the trial other than a part in which the evidence of a witness is taken.

s.650(1.2) Video links - Where the court so orders, an accused who is confined in prison may appear by closed-circuit in prison television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication, for any part of the trial other than a part in which the evidence of a witness is taken, if the accused is given the opportunity to communicate privately with counsel, in a case in which the accused is represented by counsel.

s.650(2) Exceptions - The court may

(a) cause the accused to be removed and to be kept out of court, where he misconducts himself by interrupting the proceedings so that to continue the proceedings in his presence would not be feasible;

(b) permit the accused to be out of court during the whole or any part of his trial on such conditions as the court considers proper; or

(c) cause the accused to be removed and to be kept out of court during the trial of an issue as to whether the accused is unfit to stand trial,

where it is satisfied that failure to do so might have an adverse effect on the mental condition of the accused.

6. To receive evidence of any witness
s.714.1 to s.714.8

s.714.1 Video links, etc. - witness in Canada - A court may order that a witness in Canada give evidence by means of technology that permits the witness to testify elsewhere in Canada in the virtual presence of the parties and the court, if the court is of the opinion that it would be appropriate in all the circumstances, including

(a) the location and personal circumstances of the witness;
(b) the costs that would be incurred if the witness had to be physically present; and
(c) the nature of the witness' anticipated evidence.

s.714.2(1) Video links, etc. - witness outside Canada - A court shall receive evidence given by a witness outside Canada by means of technology that permits the witness to testify in the virtual presence of the parties and the court unless one of the parties satisfied the court that the reception of such testimony would be contrary to the principles of fundamental justice.

s.714.2(2) Notice - A party who wishes to call a witness to give evidence under subsection (1) shall give notice to the court before which the evidence is to be given and the other parties of their intention to do so not less than ten days before the witness is scheduled to testify.

s.714.3 Audio evidence - witness in Canada - The court may order that a witness in Canada give evidence by means of technology that permits the parties and the court to hear and examine the witness elsewhere in Canada, if the court is of the opinion that it would be appropriate, considering all the circumstances including

(a) the location and personal circumstances of the witness;

(b) the costs that would be incurred if the witness had to be physically present;

(c) the nature of the witness' anticipated evidence; and

(d) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

s.714.4 Audio evidence - witness outside Canada - The court may receive evidence given by a witness outside Canada by means of technology that permits the parties and the court in Canada to hear and examine the witness, if the court is of the opinion that it would be appropriate, considering all the circumstances including

(a) the nature of the witness' anticipated evidence; and
(b) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

s.714.5 Oath or affirmation - The evidence given under section 714.2 or 714.4 shall be given

(a) under oath or affirmation in accordance with Canadian law;

(b) under oath or affirmation in accordance with the law in the place in which the witness is physically present; or

(c) in any other manner that demonstrates that the witness understands that they must tell the truth.

s.714.6 Other laws about witnesses to apply - When a witness who is outside Canada gives evidence under section 714.2 or 714.4, the evidence is deemed to be given in Canada, and given under oath or affirmation in accordance with Canadian law, for the purposes of the laws relating to evidence, procedure, perjury and contempt of court.

s.714.7 Costs of technology - A party who wishes to call a witness to give evidence by means of the technology referred to in section 714.1, 714.2, 714.3 or 714.4 shall pay any costs associated with the use of the technology.

s.714.8 Consent - Nothing in sections 714.1 to 714.7 is to be construed as preventing a court from receiving evidence by means of the technology referred to in sections 714.1 to 714.4 if the parties so consent.

The equipment being installed will provide for simultaneous video and oral communication for all parties.

Counsel will be advised of the following installations at those Remand Facilities and Court locations that are not included above, by an addendum to this Practice Note as they enter the system.

1. The Calgary Remand Centre will be brought on line in the Fall, 2006.

2. Remand Centres at Lethbridge, Medicine Hat, Red Deer, Grande Prairie and Peace River, with Calgary Corrections and Edmonton Corrections notice of the time of such locations coming on line will be sent to counsel as the completion schedules for these locations become known.

3. Court locations not included in the hereinbefore list.

Reviews of this program will be undertaken from time to time. These reviews will consider adjustments necessary to ensure the system provides the needs of the users of the system.

DATED this 20th day of June 2006

The Honourable A.G. Vickery
Chief Judge of the Provincial Court of Alberta