

<p>TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique</p>	<p>EFFECTIVE DATE – ENTRÉE EN VIGEUR : September 1, 2015 Le 1^{er} septembre 2015</p>	<p>DOCUMENT ORDER – No. DU DOCUMENT: Policy – Politique 25</p>
<p>CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appel</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

PRELIMINARY INQUIRIES

1. Request for a Preliminary Inquiry

Preliminary inquiries are only to be held upon the application of the accused or a Crown Prosecutor. Where the accused does not request a preliminary inquiry the Crown Prosecutor generally should not request one. However, the Crown Prosecutor should consider requesting a preliminary inquiry where it is in the interests of justice to do so, including in circumstances where the charges are very serious or it is important that a Crown witness's testimony be on the record at the earliest possible opportunity.

2. Order for a Focus Hearing

To assist the parties, the Crown Prosecutor or the accused may request, or a judge, on his or her own motion, may order a hearing, commonly referred to as a "focus hearing". The focus hearing can assist the parties in identifying the issues concerning which evidence will be given at the trial, and in identifying the witnesses that will be heard, taking into account the witnesses' needs and circumstances. The focus hearing may also encourage the parties to consider any other matters that would promote a fair and expeditious preliminary inquiry.

Where appropriate, the Crown Prosecutor shall consider requesting a focus hearing.

3. Circumstances in Which Detailed Evidence May Be Required at the Preliminary Inquiry

In general, the Crown Prosecutor should try to keep preliminary inquiries as brief as possible while calling sufficient evidence to ensure that the charge proceeds to trial.

The Crown Prosecutor shall call detailed evidence at the preliminary inquiry where it is in the interests of justice to do so, including in the following situations:

- (a) where a witness may not be available at trial due to illness, age, or other reasons;
- (b) where a witness is liable to change his or her evidence between the preliminary inquiry and the trial;
- (c) where a witness's safety is in jeopardy and will remain so until he or she has testified; or
- (d) where the charges are very serious, particularly where they involve death.

When considering matters of evidence or procedure in relation to a preliminary inquiry, the Crown Prosecutor should be mindful of the relevant provisions of the *Criminal Code* and the Rules of Provincial Court Practice.

4. Delays

Delays in scheduling or conducting the preliminary inquiry may pose a threat to the viability of the prosecution or interfere with the administration of justice. Where this occurs, the Crown Prosecutor should consider requesting a direct indictment as set out in Policy 13, Indictments and Direct Indictments.

5. Alternative Means of Presenting Evidence

The Crown Prosecutor should consider the provisions of subsections 540(7) to 540(9) of the *Criminal Code* for presenting evidence at a preliminary inquiry.

On a preliminary inquiry the court may receive any evidence it considers “credible and trustworthy” in the circumstances of the case provided counsel has given the other party reasonable notice of his or her intention to tender such evidence. Upon application of a party the court will order the witness to attend for examination or cross-examination.

Evidence admitted under subsection 540(7) cannot be read at a subsequent trial.

6. Reassessment During and After the Preliminary Inquiry

During and after the preliminary inquiry, the Crown Prosecutor should assess the evidence as it unfolds. Occasionally, the evidence anticipated at the time of charge approval does not come about during or after the preliminary inquiry. Where a charge no longer meets the charge approval standard, the Crown Prosecutor should reassess the viability of proceeding with the matter.

Where the Crown Prosecutor determines that the charge no longer meets the charge approval standard although the result of the preliminary inquiry was to proceed to trial, the Crown Prosecutor shall consult with the Regional Director or the Director of Specialized Prosecutions before withdrawing the matter.

7. Related Policies

Policy 13	Indictments and Direct Indictments
Policy 16	Withdrawal of Charges