

PRE-TRIAL ISSUES & TRAIL



- The Crown is proceeding by either indictment in the Supreme Court, or summarily in the Provincial Court
 - Pre-trial conference or pre-trial applications
 - RE: Disclosure materials, expert evidence, or third-party records.
 - Preparation of witnesses and gathering of evidence.
 - The Crown bears the burden of proof, which is beyond a reasonable doubt.
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DIRECT EXAMINATION



- The Crown conducts examination in chief of key witnesses (e.g., police officers, civilians, experts).
 - Crown presents the evidence they have against the accused to the Court (e.g., documents, records, etc.).
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CROSS EXAMINATION



- Defence counsel conducts cross-examination on the evidence the Crown presented to the Court.
 - Defence counsel presents its evidence to the Court (e.g., documents, witnesses, experts).
 - The Accused person is not required to testify in trial.
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RE-DIRECT EXAMINATION



- The Crown conducts a re-direct examination of the witnesses which arose in cross examination.
 - The Crown allows the witness(es) to clarify, explain or qualify their answers that were given under cross examination by the Defence counsel.
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CLOSING SUBMISSIONS & COURT DECISION



- Both parties, provide the Court with closing submissions summarizing the evidence, applying the relevant law, and affirming their respective positions in the matter as to what the Judge should decide.
- The Judge delivers their decision and finds the accused either guilty or not guilty. If the accused is found guilty, the Judge imposes a sentence that is proportionate to the offence. If not, the accused is free.



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Preliminary Inquiry and Trial Overview by Theresa M. M. John

PRELIMINARY INQUIRY

A Preliminary Hearing is a proceeding in the BC Supreme Court and is used in serious criminal cases to determine whether the evidence gathered by the BC Prosecution Service (the “Crown”) against the accused person is sufficient to proceed to a trial.

Requesting a Preliminary Inquiry is only available to an accused if they are tried by indictment and the Crown’s sentencing position is 14 years or more.

Various offences which issue a sentence of 14 years or more include:

- a. Violent property offences;
- b. Drugs and controlled substances;
- c. Break and Enter;
- d. Robbery;
- e. Sexual offences; and
- f. Administration of Justice.

If there are two or more accused being tried by the Crown and one or more of them request a preliminary inquiry, then a hearing must be held with respect to all of them (section 534(4.2) of the *Criminal Code*).

A preliminary inquiry is heard by a judge who remains impartial and provides a judgement by determining whether there is enough evidence in the matter to proceed to a trial.

The Crown bears the burden to present to the court the evidence against the accused, and the defense counsel can cross examine on the evidence.

It is important to note that a preliminary inquiry *does not* determine the guilt or innocence of an accused person.

At the end of the preliminary inquiry, the judge delivers a decision to the Court which either dismisses the criminal charges in the matter because there is not enough evidence to proceed to trial, or the Judge finds enough evidence to proceed to trial and directs the parties to schedule a trial in the matter.

TRIAL

If a serious indictable matter is proceeding to trial, an accused can either elect to be tried by a judge and jury, or by a provincial court judge in the Supreme Court. This election is made at an arraignment hearing, which is when the accused enters a plea of guilty or not guilty.

Before a trial commences, there may be pre-trial applications that need to be dealt with which relate to either disclosure materials, expert evidence, or third-party records. Sometimes, when a trial is more than one or two days long, the parties are required to appear at a Pre-Trial Conference. This appearance occurs before trial and provides an opportunity for the parties to discuss any outstanding issues before a Judge.

Preparation for a trial is very important and includes the preparation of witnesses and gathering of evidence to build your case as defense counsel.

DIRECT EXAMINATION BY CROWN COUNSEL

The Crown begins trial by conducting an examination in chief of key witnesses in the matter, which may include, but not limited to, civilians, police officers, or experts.

CROSS-EXAMINATION BY DEFENCE COUNSEL

After the examination in chief by the Crown, defence counsel conducts a cross-examination of the evidence. This means that defence counsel can cross examine the Crown's witnesses or call its own witnesses to testify and provide evidence to the court. An important aspect of criminal trial is the testimony of the accused is not required.

RE-DIRECT EXAMINATION BY CROWN COUNSEL

After the defence completes their cross-examination, the Crown can conduct a re-direct, in which the Crown is provided a *limited* opportunity to ask witnesses questions relating to matters which arose in cross examination. The purpose of a re-direct by the Crown is to allow the witness to clarify, explain or qualify answers that were given in cross-examination.

CROSS-EXAMINATION BY DEFENCE COUNSEL AFTER RE-DIRECT

Sometimes, defence counsel will ask the Court to conduct a cross-examination of the witnesses after the Crown completes their re-direct. However, this does not always occur.

CLOSING SUBMISSIONS BY THE PARTIES

Afterward, the parties provide closing submissions to the Court which means the parties summarize the evidence presented at the trial and provide relevant case law in supporting their respective positions. These summarizations may include describing the testimony of witnesses, the Crown's evidence or lack of evidence, amongst other topics. Closing submissions can either be oral or written.

DECISION DELIVERED BY THE JUDGE

Once the closing submissions are completed, the Judge delivers a judgement to the accused, which is formed on the standard of beyond a reasonable doubt. Therefore, the Judge may find that beyond a reasonable doubt, the accused is either found guilty or not guilty in the matter.

If the accused is found not guilty, they are free to leave the courthouse and the proceeding ends.

SENTENCING OF ACCUSED

If the accused is found guilty, the judge must provide a sentencing decision. The judge's sentencing decision is made after the Crown and defense counsel provide the court with sentencing submissions. This means they tell the court what their sentencing position is and the relevant case law which support their respective submission. Sometimes, the parties can come to an agreement and provide the judge with a joint sentencing position. However, the judge is not bound by the joint submission of the parties and can provide a sentencing position that is different from the one that is provided by the parties. After the parties provide the Court their sentencing submissions, the Judge delivers their decision and imposes a sentence on the accused which may be either incarceration, probation, or parole, or a combination of the three.