



The Advocates' Society

La Société des plaideurs

September 6, 2018

Anthony Housefather, M.P.
Chair, Standing Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Housefather:

RE: Bill C-75: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*

The Advocates' Society, established in 1963, is a not-for-profit association of nearly 6,000 members throughout Canada. The mandate of The Advocates' Society includes, among other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates. The Advocates' Society's membership includes Crown prosecutors and members of the criminal defence bar.

The Advocates' Society has reviewed with interest Bill C-75: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*. As Minister Wilson-Raybould stated in her remarks to the House of Commons on May 24, 2018, Canada's criminal justice system is under "significant strain". The increasing complexity of cases and length of trials on one hand and the pressure on courts to hear criminal cases within the *R. v. Jordan*¹ timelines on the other enhance the burden on the criminal justice system. The impacts are felt by all Canadians, and particularly Indigenous people and marginalized Canadians living with mental illnesses and addiction, who are overrepresented in the criminal justice system as both victims and accused persons. Public confidence in the criminal justice system is in jeopardy.

The Advocates' Society applauds your Government for its willingness to implement reforms with a view to enhancing efficiency within our criminal justice system. In particular, the incorporation of the principles discussed by the Supreme Court of Canada in *R. v. Antic*² into the proposed changes to provisions regarding bail are an important improvement. However, The Advocates' Society has some concerns about certain mechanisms chosen to implement certain reforms, as they could result in a compromise of the rights of victims and accused persons.

With this in mind, The Advocates' Society makes the following comments on certain proposed changes in Bill C-75.

¹ [2016] 1 SCR 631.

² [2017] 1 SCR 509.

1. Elimination of Preliminary Inquiries for Most Criminal Matters

A preliminary inquiry is currently available where an adult is charged with an indictable offence and elects to be tried before a provincial superior court by a judge alone or by a court composed of a judge and jury. A preliminary inquiry is an additional procedural step to determine if there is sufficient evidence to put an accused person on trial. The Crown's obligation to provide all relevant disclosure to the accused person³ assists with decision-making, potential resolution and streamlined approaches to the issues.

Bill C-75 proposes amendments that would permit only an adult accused of a crime punishable by life imprisonment to request a preliminary inquiry and permit a judge to limit the scope of a preliminary inquiry by specifying the issues and limiting the witnesses to be called.⁴

The goal of the proposed legislation is to reduce delay in criminal proceedings. The theory of the proposed amendments under Bill C-75 is that eliminating preliminary inquiries would reduce the time spent hearing the testimony of witnesses and victims at both preliminary inquiries and trial.

If implemented, however, the proposed legislation could have significant unintended impacts and would not necessarily achieve its goal. Preliminary inquiries serve several important purposes which often economize court resources by clarifying and narrowing issues, focusing trials and facilitating plea negotiations between Crown and defence counsel.

There is a trend that many criminal matters are resolved at the lower courts, and preliminary inquiries currently form only a small percentage of litigation in the lower courts. The strengths and weaknesses of a case are revealed at the preliminary inquiry of that case. Often, a preliminary inquiry will result in the resolution of a matter or the reframing of the nature of a prosecution. Consequently, preliminary inquiries can actually help to alleviate backlog at the superior courts and provide for more effective case management of serious cases. In addition, there are existing legislative mechanisms which can allow for the streamlining of preliminary inquiries. Section 540(7) of the *Criminal Code*, for example, allows a justice to receive credible and trustworthy evidence by way of a statement that is in writing or otherwise recorded.

Eliminating preliminary inquiries for any indictable offence which does not carry a life sentence may actually result in an increased number of trials. Accused persons will likely be reluctant to agree to a resolution without testing the merits of the case through a preliminary inquiry. More trials mean increased legal costs which are borne by provincial legal aid systems or accused persons directly. This may frustrate access to justice where higher level courts tend to have costlier litigation, especially jury trials. In addition, victims of serious offences would have no choice but to testify at trial, instead of testifying at an earlier preliminary inquiry which may result in a resolution and obviate the need for testimony at trial. While some cases will proceed to trial even after a preliminary inquiry, victims are often not cross-examined as vigorously at preliminary inquiries as they are at trial. Moreover, fewer victims tend to testify at preliminary inquiries as the evidentiary threshold to show cause for trial is lower than for a conviction at trial.

³ See the decision of the Supreme Court of Canada in *R. v. Stinchcombe*, [1991] 3 SCR 326.

⁴ Bill C-75, ss. 240-244.

Recommendation

The Advocates' Society proposes a nuanced approach to the reduction of preliminary inquiries. We recommend that Bill C-75 provide for the option for a preliminary inquiry for an adult charged with an indictable offence who elects to be tried before a provincial superior court by a judge alone or by a court composed of a judge and jury. Preliminary inquiries for such offences should be allowed if, in the view of the court, one of the parties has demonstrated that a preliminary inquiry will, to some degree, narrow or eliminate the issues in the proceeding. Preliminary inquiries should also be allowed if both the Crown and the accused consent.

To reflect these proposed changes, The Advocates' Society suggests amendments to Bill C-75 as articulated in Appendix A to this letter.

2. Elimination of Peremptory Juror Challenges

Bill C-75 proposes to eliminate the peremptory challenge.⁵ The peremptory challenge is a tool in the jury selection process. The *Criminal Code* gives both the defence and the prosecution a limited number of these challenges. These challenges are “peremptory” because they are exercised as of right and do not require the challenging party to justify their use. Peremptory challenges are nearly as old as the jury system itself, having originated in England in the twelfth century.

The Modern Day Rationale for the Peremptory Challenge

The original rationale for the peremptory challenge was to prevent the King from unfairly empanelling the jury with only his allies. The modern-day rationale for the peremptory challenge is to help ensure an impartial and representative jury, and to give the accused a measure of control over the selection of the triers of fact who will determine their fate.⁶

The criminal defence bar overwhelmingly believes that the peremptory challenge is a vital tool in protecting the fair trial rights of an accused person, particularly where that person is Indigenous or a person of colour. The defence can exercise peremptory challenges to attempt to secure a jury that is more representative of the Canadian population. In a criminal justice system in which both victims and accused persons often have diverse backgrounds while jury pools, particularly in smaller communities and remote areas, are more homogeneous, the peremptory challenge thus gives the defence and the Crown a tool for achieving some diversity within the jury.

Remedying the Concern with Peremptory Challenges

Paradoxically, the stated rationale in the Minister's *Charter* statement for eliminating peremptory challenges is that either the Crown or the defence can use them in a discriminatory way.⁷ The proposed abolition of the peremptory challenge appears to be a direct response to the recent acquittal of Gerald Stanley, a white man accused of murdering an Indigenous man. The media widely reported that Mr.

⁵ Bill C-75, Section 271 (effectively deleting Section 634 in its entirety from the *Criminal Code*).

⁶ *R. v. Bain*, [1992] 1 S.C.R. 91; Sir William Blackstone, 4 *Commentaries on the Laws of England*, William Draper Lewis, ed (Philadelphia: Geo. T. Bissel Co., 1922) at p. 353 and p. 1738.

⁷ “*Charter Statement – Bill C-75: An Act to Amend the Criminal Code, Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*”, tabled in the House of Commons, March 29, 2018.

Stanley used his peremptory challenges to secure an all-white jury. The possibility that peremptory challenges may be abused should not be used as a rationale for their elimination. Given that peremptory challenges do serve a useful social function, the focus ought to be on reform rather than abolition. If the concern is with the *discriminatory use* of the peremptory challenge, then it is the *discriminatory use* of the peremptory challenge that ought to be eliminated.

This has been the preferred approach in the United States since the seminal decision of the Supreme Court of the United States in *Batson v. Kentucky*.⁸ Where counsel believe that their adversary has used a peremptory challenge for a discriminatory purpose, they can mount a “*Batson* challenge” and ask that the judge demand a racially-neutral reason for having exercised the peremptory challenge. If the judge finds that the objecting party has made a *prima facie* case, the burden then shifts to the party exercising the peremptory challenge to justify its use.

While some commentators have noted that *Batson* challenges have a low rate of success in the United States, the mere existence of the *Batson* process has a chilling effect on discriminatory conduct. Further, lessons could be learned from those American jurisdictions where the *Batson* process enjoys only limited or mixed success, and necessary alterations to the test could be adopted to ensure a more successful process in Canada. The few courts in Canada to have considered these issues have held that the Crown’s discriminatory use of the peremptory challenge violates Section 11(d) and Section 15 of the *Canadian Charter of Rights and Freedoms* and deprives the accused of the right to a representative jury.⁹

In our respectful view, Bill C-75’s proposal to eliminate the peremptory challenge does not appear to have been the product of careful study or extensive consultation. In the most recent, comprehensive study into Indigenous representation on juries,¹⁰ The Honourable Frank Iacobucci did not recommend that peremptory challenges be abolished; rather, he recommended that the *Criminal Code* be formally amended to “prevent the use of peremptory challenges to discriminate against First Nations people serving on juries”.¹¹

Recommendations

The Advocates’ Society recommends further study and consultation with stakeholders, including The Advocates’ Society, on the use and utility of the peremptory challenge. Further study on, and stakeholder input into, other possibilities for reform are necessary before further measures are taken. Alternatively, The Advocates’ Society recommends adopting a *Batson*-type procedure in Canada as an alternative to the abolition of the peremptory challenge.

3. Acceptance of Routine Police Evidence in Writing

The Advocates’ Society has serious concerns with the proposed amendments to the provisions in the *Criminal Code* dealing with “routine police evidence” and believes that the proposed amendments are

⁸ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁹ See, e.g., *R. v. Brown*, [1999] O.J. No. 4867 (Sup Ct.).

¹⁰ Report of the Independent Review Conducted by The Hon. Frank Iacobucci, *First Nations Representation on Ontario Juries* (February 2013), online: Ontario Ministry of the Attorney General: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html.

¹¹ *Ibid.* at para. 44 (Recommendation 15).

constitutionally vulnerable. Bill C-75 would introduce a new Section 657.01, a provision that would relieve the Crown of its essential obligation to call *viva voce* evidence in order to prove aspects of its case.¹² This would effectively rob accused persons of their opportunity to test those aspects of the Crown's case through cross-examination.

What is particularly concerning about this proposed amendment is just how broadly "routine police evidence" is defined. As drafted, it may include evidence of any "police officer" related to:

- (a) gathering evidence and making observations;
- (b) analyzing, preserving or otherwise handling evidence;
- (c) identifying or arresting an accused or otherwise interacting with an accused; or
- (d) other routine activities similar to those set out in paragraphs (a) to (c) that the police officer undertook in the course of their duties.

The breadth of this definition is such that the vast majority of evidence that is provided by police officers in criminal trials could now fit squarely within this definition. This could mean a serious reduction in the due process rights to those who face the possibility of a criminal sanction at the hands of the state.

The right to cross-examine is more than just a valuable tool for accused persons. It is a central aspect of our Canadian criminal justice system and a constitutionally-protected entitlement for those who stand accused of criminal offences in this country. The truth-seeking function of an adversarial justice system relies, for its very validity, on the opportunity for both parties to a cause to test the credibility and reliability of the opposition's witnesses. As John Henry Wigmore explained, cross-examination is "the greatest legal engine ever invented for the discovery of truth".¹³

The Supreme Court of Canada has confirmed repeatedly that the right of an accused person to cross-examine an opposing witness is a principle of fundamental justice enshrined in Section 7 of the *Canadian Charter of Rights and Freedoms*.¹⁴ The Court has heralded the right to cross-examine as "an essential component of the right to make a full answer and defence".¹⁵ The Supreme Court has explicitly proclaimed that "the right to cross-examine is now recognized as being protected by ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*."¹⁶ Cross-examination allows for defence counsel to examine potential frailties or inconsistencies in police evidence and determine whether disclosure has been fully made. Uncovering issues with regard to Crown evidence can assist with reducing wrongful convictions.

While the amendments would allow an accused person to challenge the Crown's election to proceed by way of affidavit, such a process would create additional constitutional problems. In particular, for the accused to justify their request to have *viva voce* evidence called, they would likely have to reveal aspects of their defence to the Crown. This would interfere with the accused's constitutionally-enshrined right to remain silent in the face of a criminal allegation from the state.

Large-scale restrictions on the accused's right to cross-examine the Crown's witness will not necessarily make for a criminal justice system that is more efficient while still fair. There is no empirical data to

¹² Bill C-75, Section 278.

¹³ John Henry Wigmore, *5 Evidence in Trials at Common Law*, James H. Chabourn, ed (Boston: Little, Brown & Co., 1974) at Section 1367.

¹⁴ *R. v. Potvin*, [1989] 1 S.C.R. 525.

¹⁵ *R. v. Lyttle*, [2004] 1 S.C.R. 193 at para. 41.

¹⁶ *Ibid.* at para. 43. See also *R. v. Osolin*, [1993] 4 S.C.R. 595.

support such a claim. It must remain the responsibility of the trial judge, in enforcing the rules of criminal procedure and evidence, to manage trials such that cross-examination that is impermissible, redundant, or irrelevant does not take up undue court time.

Moreover, statements in writing are already often accepted by the court on non-contentious issues. This allows for the streamlining of trials without limiting the right to cross-examine police officers on more contentious issues. The Advocates' Society is of the view that this existing mechanism already accomplishes the dual goals of achieving efficiency and preserving the right of cross-examination.

Recommendation

The Advocates' Society recommends that Section 278 and other sections dealing with "routine police evidence" be removed in their entirety from Bill C-75.

4. Impact of the Increase in Penalty for Summary Conviction Offences

Bill C-75 will increase the maximum term of imprisonment to two years less a day for most summary conviction offences.¹⁷ Indeed, note (f) in the Bill's summary notes refers to increasing "the default maximum penalty to two years less a day of imprisonment for summary conviction offences". Currently, summary conviction offences fall into two broad categories of penalties: more serious offences with a maximum penalty of 18 months of imprisonment (often referred to as "super-summary" offences, including sexual assault and impaired driving) and those with a maximum penalty of 6 months.

Leaving aside the question of whether there is a sound rationale for increasing maximum sentences for summary conviction offences, The Advocates' Society is concerned that this amendment creates unfortunate collateral consequences which will have adverse effects on access to justice for low-income Canadians.

Under Section 802.1 of the *Criminal Code*, agents (*i.e.* non-lawyers) may not examine or cross-examine witnesses on behalf of an accused where the accused is liable, on summary conviction, to a term of imprisonment of more than six months (unless authorized to do so by a provincial program approved by the Lieutenant Governor-in-Council). In practice, this means that no agent, including a student doing *pro bono* work with a legal clinic, can represent accused people charged with summary conviction offences that carry a maximum sentence of more than six months. By creating a maximum term of two years less a day for summary conviction offences, Bill C-75 would prevent many accused people from getting *pro bono* help from law school clinics and other organizations that rely on law students. Many accused are disqualified under provincial legal aid programs because even an income slightly above the poverty line renders them ineligible for legal aid. This amendment will effectively mean that many accused who might otherwise have received competent legal representation will go unrepresented.

While this may be an appropriate solution for more serious offences, The Advocates' Society believes that the assistance of non-lawyers should be maintained for more minor summary conviction offences. In particular, the penalty for those offences enumerated under Section 553 of the *Criminal Code*, which presently have a term of imprisonment of six months or less, should not be extended to a "default maximum penalty" of two years less a day of imprisonment. Section 553 is reproduced in Appendix B to this letter.

¹⁷ See for example Bill C-75, Sections 90, 110, 123, 129, 164(2), 172-174, 176, 196, 206, 207, 319, and 405.

Recommendation

The Advocates' Society recommends that the penalty for those offences enumerated under Section 553 of the *Criminal Code* not be extended to a "default maximum penalty" of two years less a day of imprisonment. This will permit non-lawyers to assist accused persons in their defence of charges related to these offences.

5. Intimate Partner Violence

Cases involving intimate partner violence make up a substantial percentage of prosecutors' case files.¹⁸ The Advocates' Society recognizes the prevalence of this issue and firmly believes that victims of intimate partner violence should benefit from the protection of the legal system. These serious offences often involve very vulnerable members of society and persons accused of these offences should be vigorously prosecuted.

In a case where an accused person is charged with an offence involving intimate partner violence and was previously convicted of the same conduct, Bill C-75 proposes shifting the onus to the accused to show cause why an order for the accused's detention in custody would not be justified.¹⁹ This represents a reversal of the onus for this type of offence. Bill C-75 also proposes to amend the current sentencing principles under Section 718 of the *Criminal Code* such that, under Section 718.3, there would be judicial discretion to exceed the maximum sentence imposed on an offender.²⁰ The goal of the proposed amendments is laudable. That said, The Advocates' Society has concerns that the proposed amendments may create confusion.

First, the definition of an "intimate partner" "includes [a person's] current or former spouse, common-law partner and dating partner".²¹ Where the relationship between an accused person and a complainant is unclear, credible and trustworthy evidence would be required at a bail hearing to demonstrate that two individuals are in a "dating" relationship (as opposed to a friendship). It would also necessitate a jurist to hear evidence of what constitutes a "dating relationship" based on a non-exhaustive list of factors which may include the length of the relationship, the co-habitation status of the partners, the sexual relationship of the partners, the sharing of financial or other property, and the subjective points-of-view of the partners.

Second, the Canadian Police Information Centre's records do not currently differentiate between violence against an intimate partner and other forms of assault. We are currently unaware of any streamlined electronic data system based within and across provinces which would have accurate information with respect to outstanding bail releases and prior criminal convictions. As such, each offence would require further investigation and inquiry, which could result in further delay in the prosecution and resolution of these matters. Bill C-75 also does not provide any temporal guidance around an accused being "previously convicted of an offence" under proposed new Section 515(6)(b.1) of the *Criminal Code* (Section 227(6) of the Bill).

¹⁸ Individual Canadian jurisdictions have designated courts, prosecutors and programs that are dedicated to domestic violence issues.

¹⁹ Bill C-75, s. 227(6).

²⁰ Bill C-75, s. 297.

²¹ Bill C-75, s. 1(3).

Recommendation

In order to cure the ambiguity surrounding the legislative definition of “dating relationship”, The Advocates’ Society proposes that the definition of “intimate partner” be amended to provide further guidance to the court. Some or all of the factors enumerated above, as well as others, may be incorporated into the definition.

6. Mandatory Minimum Sentences

Bill C-75 has been explicitly held out by the Government to be a large-scale attempt to increase efficiency and reduce court delays. Yet, Bill C-75 does not include within it any attempt to remedy a key contributor to those problems: the existence of a large number of mandatory minimum sentences for various offences throughout the *Criminal Code*.

Mandatory minimum sentences, especially for relatively minor criminal offences, restrict the discretion of sentencing judges to sentence offenders in accordance with the unique circumstances of each offence and each individual offender. They continue to attract lengthy and costly constitutional challenges, several of which have been successful.²² They also act to create incentives for offenders to try their luck at trial rather than accept the fate of an unduly high mandatory jail sentence.

This Government has already articulated a recognition of the problematic nature of mandatory minimum sentences and indicated an interest in remedying the problem. The Advocates’ Society had hoped that a significant change in this regard would be incorporated in this legislative attempt at increasing the efficiency of our criminal justice system.

Recommendation

The judicial principles which have been articulated around the constitutionality of mandatory minimum sentencing should be taken into account in Bill C-75. Specifically, a judicial officer should have the authority to take into account an accused person’s individual circumstances which might justify a deviation from a statutory mandatory minimum sentence and, where there is such a deviation, the judicial officer should provide written reasons for their decision.

Thank you for providing The Advocates’ Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

²² See, for example, *R. v. Nur*, [2015] 1 S.C.R. 773. The Advocates’ Society acted as an intervener in the appeal to the Supreme Court of Canada and took the position that the mandatory minimum sentence at issue was unconstitutional.

Yours truly,



Brian Gover
President

C: Marc-Olivier Girard, Clerk, Standing Committee on Justice and Human Rights

The Advocates' Society Task Force

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Appendix A: Suggested amendments to certain provisions of Bill C-75 (preliminary inquiries)

Section 240

The proposed amendment to Section 535 of the *Criminal Code* should remain as articulated in Bill C-75, except it should be renumbered Section 535(1).

A new Section 535(2) of the *Criminal Code* should read:

Inquiry by justice

535(2) If an accused who is charged with an indictable offence that is not punishable by imprisonment for life is before a justice and a request has been made for a preliminary inquiry under subsection 536(4.01) or 536.1(3.1) and granted by the justice, the justice shall, in accordance with this Part, inquire into the charge and any other indictable offence, in respect of the same transaction, founded on the facts that are disclosed by the evidence taken in accordance with this Part.

Section 241(1)

The proposed addition of Section 536(2.1) to the *Criminal Code* should be revised as underlined below:

Election before justice – other indictable offences

536(2.1) If an accused is before a justice, charged with an indictable offence — other than an offence that is punishable by imprisonment for life, an offence listed in section 469 that is not punishable by imprisonment for life or an offence over which a provincial court judge has absolute jurisdiction under section 553 —, the justice shall, after the information has been read to the accused, put the accused to an election in the following words:

You have the option to elect to be tried by a provincial court judge without a jury and without having had a preliminary inquiry; or you may elect to be tried by a judge without a jury; or you may elect to be tried by a court composed of a judge and jury. If you do not elect now, you are deemed to have elected to be tried by a court composed of a judge and jury. If you elect to be tried by a judge without a jury or by a court composed of a judge and jury or if you are deemed to have elected to be tried by a court composed of a judge and jury, you will have a preliminary inquiry only if:

- (a) in the view of the court, either you or the prosecutor has demonstrated that a preliminary inquiry will, to some degree, narrow or eliminate some of the issues in the proceeding; or
- (b) you and the prosecutor provide your written consent to your having a preliminary inquiry.

How do you elect to be tried?

Section 241(3)

A new Section 536(4.01) of the *Criminal Code* should read:

Request for preliminary inquiry

536(4.01) If an accused referred to in subsection (2.1) elects to be tried by a judge without a jury or by a court composed of a judge and jury or does not elect when put to the election or is deemed under

paragraph 565(1)(a) to have elected to be tried by a court composed of a judge and jury, the justice shall, subject to section 577, hold a preliminary inquiry into the charge if

- (a) the justice is satisfied, on a motion made by the accused or the prosecutor, that a preliminary inquiry will, to some degree, narrow or eliminate some of the issues in the proceeding, where the motion is made at that time or 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; or
- (b) the justice receives the written consent of the accused and the prosecutor to the accused having a preliminary inquiry where the consent is provided at that time or 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.

Section 242(1)

The proposed addition of Section 536.1(2.1) to the *Criminal Code* should be revised as underlined below:

Election before judge or justice of the peace in Nunavut – other indictable offences

536.1(2.1) If an accused is before a judge or justice of the peace, charged with an indictable offence — other than an offence that is punishable by imprisonment for life, an offence listed in section 469 that is not punishable by imprisonment for life or an offence mentioned in section 553 —, the judge or justice of the peace shall, after the information has been read to the accused, put the accused to an election in the following words:

You have the option to elect to be tried by a judge without a jury or to be tried by a court composed of a judge and jury. If you do not elect now, you are deemed to have elected to be tried by a court composed of a judge and jury. If you elect to be tried by a judge without a jury or by a court composed of a judge and jury or if you are deemed to have elected to be tried by a court composed of a judge and jury, you will have a preliminary inquiry only if:

- (a) in the view of the court, either you or the prosecutor has demonstrated that a preliminary inquiry will, to some degree, narrow or eliminate some of the issues in the proceeding; or
- (b) you and the prosecutor provide your written consent to your having a preliminary inquiry.

How do you elect to be tried?

A new Section 536.1(3.1) of the *Criminal Code* should read:

Request for preliminary inquiry – Nunavut

536.1(3.1) If an accused referred to in subsection (2.1) elects to be tried by a judge without a jury or by a court composed of a judge and jury or does not elect when put to the election or is deemed under paragraph 565(1)(a) to have elected to be tried by a court composed of a judge and jury, the justice or judge shall, subject to section 577, hold a preliminary inquiry into the charge if

- (c) the justice or judge is satisfied, on a motion made by the accused or the prosecutor, that a preliminary inquiry will, to some degree, narrow or eliminate some of the issues in the proceeding, where the motion is made at that time or 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 or judge; or
- (d) the justice or judge receives the written consent of the accused and the prosecutor to the accused having a preliminary inquiry where the consent is provided at that time or 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 or judge.

Note

Where necessary, additional revisions should be made to Bill C-75 to ensure appropriate cross-references to the proposed amendments above.

Appendix B: Section 553 of the *Criminal Code*

Absolute jurisdiction

553 The jurisdiction of a provincial court judge, or in Nunavut, of a judge of the Nunavut Court of Justice, to try an accused is absolute and does not depend on the consent of the accused where the accused is charged in an information

- (a) with
 - (i) theft, other than theft of cattle,
 - (ii) obtaining money or property by false pretences,
 - (iii) unlawfully having in his possession any property or thing or any proceeds of any property or thing knowing that all or a part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment or an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment,
 - (iv) having, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security, or
 - (v) mischief under subsection 430(4),

where the subject-matter of the offence is not a testamentary instrument and the alleged value of the subject-matter of the offence does not exceed five thousand dollars;

- (b) with counselling or with a conspiracy or attempt to commit or with being an accessory after the fact to the commission of
 - (i) any offence referred to in paragraph (a) in respect of the subject-matter and value thereof referred to in that paragraph, or
 - (ii) any offence referred to in paragraph (c); or

- (c) with an offence under

- (i) section 201 (keeping gaming or betting house),
- (ii) section 202 (betting, pool-selling, book-making, etc.),
- (iii) section 203 (placing bets),
- (iv) section 206 (lotteries and games of chance),
- (v) section 209 (cheating at play),
- (vi) section 210 (keeping common bawdy-house),
- (vii) [Repealed, 2000, c. 25, s. 4]
- (viii) section 393 (fraud in relation to fares),
- (viii.01) section 490.031 (failure to comply with order or obligation),
- (viii.02) section 490.0311 (providing false or misleading information),
- (viii.1) section 811 (breach of recognizance),
- (ix) subsection 733.1(1) (failure to comply with probation order),
- (x) paragraph 4(4)(a) of the *Controlled Drugs and Substances Act*, or
- (xi) paragraph 5(3)(a.1) of the *Controlled Drugs and Substances Act*.

R.S., 1985, c. C-46, s. 553; R.S., 1985, c. 27 (1st Supp.), s. 104; 1992, c. 1, s. 58; 1994, c. 44, s. 57; 1995, c. 22, s. 2; 1996, c. 19, s. 72; 1997, c. 18, s. 66; 1999, c. 3, s. 37; 2000, c. 25, s. 4; 2010, c. 17, s. 25; 2012, c. 1, s. 33.