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PRELIMINARY INQUIRIES

1 Introduction

A preliminary inquiry will be held if:

- before or during the course of a trial in the Magistrate's Court, it appears to the Magistrate that the case should be before the High Court; or
- before the commencement of the trial, the prosecution has made an application that the case be tried in the High Court: *s207 CPC*.

Purpose of a Preliminary Inquiry

The purpose of the preliminary inquiry is for the Magistrate to determine whether there is a sufficient case, or evidence or grounds, to put the defendant on his or her trial before the High Court. In this respect, the Magistrate's Court acts as a gatekeeper and prevents prosecutions which have insufficient evidence from proceeding to the High Court.

All the rules and procedures in respect to a preliminary inquiry are contained at *s56, ss210-232 CPC*. This chapter is not intended to replace that legislation and it is important that the rules contained in the *CPC* relating to preliminary inquiries are followed.

2 Role of the Magistrate

In a preliminary hearing, it is **not** the function of Magistrates to:

- determine, or even comment on, the guilt or innocence of the defendant;
- believe or disbelieve any of the witnesses;
- disallow any evidence;

The only question to be answered by the Magistrate is:

- "Would a judge, at the trial, convict the defendant on the evidence placed before us, if that evidence were uncontradicted?"

Preliminary Inquires protect the accused from baseless charges because the Magistrate is required to discharge the accused in cases where there is not sufficient evidence to commit the person to trial by the High Court.

A fundamental principal in the English Common Law system, on which the Solomon Islands is based, is that when an accused is charged with a felony he or she must be made aware of the seriousness of the charge and the facts upon which the charged is based well before the trial starts. This advance knowledge is given to the accused in proceedings known as a preliminary inquiry: *R v Sethuel Kelly & Gordon Darcy* (Unrep. Criminal Case No. 2 of 1996).

3 Forms of Preliminary Inquiry

A preliminary inquiry, in either the **long form** or **short form**, will be held where a charge is brought against any person and where:

- it is not triable by a Magistrate's Court; or
- the Magistrate is of the opinion that it ought be tried by the High Court; or
- an application has been made by the public prosecutor that the case be tried by the High Court: *s211 CPC*

3.1 The Short Form Preliminary Inquiry Process: *ss211, 215, 216 CPC*

You may commit a person directly to the High Court using the Short Form Preliminary Inquiry where:

- you considerate appropriate to do so after looking at the circumstances of the case; and
- an application has **not** been made to the contrary by the accused person, his or her advocate, or by the public prosecutor.

The Process

Reading over the Charge

You shall read over the charge and explain to the accused:

- the charge; and
- the purpose of the proceedings; and
- that he or she will have the opportunity later on in the inquiry to make a statement if he or she chooses to.

Enter a Plea

The accused is then required to enter a plea and you must record the plea.

According to *Practice Direction No. 1 of 1991* from Chief Justice Ward, a plea must be entered in a preliminary inquiry except under exceptional circumstances. If you are told that a plea is reserved, you must tell the defence counsel that they must give a plea to the High Court within 28 days.

- If during the 28 day period, the defence counsel cannot obtain sufficient instructions from the accused as to a plea, the defence counsel must submit to the High Court, in written form, all the steps taken to obtain a plea and the reasons for not obtaining one.

Statements of Witnesses and Exhibits

After the plea has been entered, notwithstanding that the accused pleads guilty, not guilty or abstains from giving a plea, you shall require the prosecution to:

- tender the statement of any witness whom they intend to call in proof at the trial;
- tender any exhibit which they intend to produce at trial; and
- read every statement of witnesses to the accused's advocate, or if unrepresented, to the accused.

Statement of the Accused

If you have considered the written statements of witnesses tendered by the prosecution and find that the statements disclose sufficient grounds for committing the accused to trial, you **must**:

- ensure that the accused understands the charge;
- ask the accused if he or she wishes to make any statement in his or her defence;
- ask the accused if he or she wishes to make the statement on oath once they have chosen to make a statement; and
- explain to accused that he or she is not bound to make a statement but if he or she choose to do so, the statement will become part of the evidence at trial.

If the defendant is unrepresented, you must address the defendant with words to the following effect:

> *"Having heard the evidence against you, do you wish to give evidence yourself or to call witnesses? If you give evidence yourself you may be cross-examined. You are not obliged to give or call evidence but if you do that evidence will be taken down and may be given against you at your trial. You should take no notice of any promise or threat that any person may have made to persuade you to say anything. If you do not give evidence in this Court, that fact will not be allowed to be the subject of any comment".*

Everything that the accused person says, either by way of a statement or evidence, must be recorded in full and shown or read back to the accused so that he or she can explain or add to the statement if he or she wishes.

Once the accused has declared his statement has been truthfully recorded, you shall attest to and certify that the statement or evidence:

- was taken in the presence and hearing of the accused; and
- is the accurate and whole statement of the accused.

After you have attested to and certified the statement of the accused, the accused person shall sign or attest to it by signing or marking the record. If the accused refuses to sign, note his or her refusal and the record may be used as if he or she signed and attested to it.

Evidence and Address in Defence of the Accused

After the accused has made a statement or given evidence, ask him or her if he or she wants to call a witness in his or her own defence.

You will take the accused's witnesses evidence in the same manner as for the prosecution.

Each witness for the accused, who is not merely a character witness for the accused, shall be bound by recognisance to appear and give evidence at the trial of the accused person.

You may adjourn a preliminary inquiry and issue process to compel the attendance of witnesses for the accused when the accused states he or she has witnesses but:

- they are not in Court;
- their absence is not due to any fault or neglect of the accused person; and
- the witnesses could give material evidence on behalf of the accused if they were present.

On the attendance of such witnesses for the accused, take their depositions and bind them by recognisance for the trial.

Accused or Accused's Advocate Addressing the Court

In a short form preliminary inquiry, the accused or his or her advocate may address the Court:

- after the reading over of the statement of witnesses; or
- after the statement or evidence of the accused person if no witnesses for the defence are called.

If the accused or his or her advocate does address the Court, the prosecution will have the right of reply.

Other Witnesses

Ask the accused if he or she intends to call any other witnesses at the trial that have not given statements at the preliminary inquiry. Do this when the accused either:

- reserves his or her defence; or
- at the conclusion of any statement in answer to the charge or evidence presented in the accused's defence.

Get the names and addresses of the witnesses that the accused wishes to call at the trial so that you can record the details and they can be summoned when the trial begins.

Make an Order on the Retention of Exhibits

See Chapter 7 "Evidence" for how to deal with exhibits.

Make Your Decision

You must decide whether there is enough evidence to commit the accused for trial or whether he or she should be discharged.

2.2 Long Form Preliminary Inquiry Process: *ss212, 215, 216 CPC*

The Process

Reading over the Charge

You shall read over the charge and explain to the accused:

- the charge; and
- the purpose of the proceedings; and
- that he or she will have the opportunity later on in the inquiry to make a statement if he or she chooses to.

Enter a Plea

The accused is then required to enter a plea and you must record the plea.

According to *Practice Direction No. 1 of 1991* from Chief Justice Ward, a plea must be entered in a preliminary inquiry except under exceptional circumstances. If you are told that a plea is reserved, you must tell the defence counsel that they must give a plea to the High Court within 28 days.

- If during the 28 day period, the defence counsel cannot obtain sufficient instructions from the accused as to a plea, the defence counsel must submit to the High Court, in written form, all the steps taken to obtain a plea and the reasons for not obtaining one.

Statements on Oath of Witnesses (Depositions)

After reading over the charge and explaining the purpose of the preliminary inquiry, take down in writing the statements, on oath, of those who know the facts and circumstances of the case. Also have exhibits tendered by the prosecution at this point.

These statements on oath will be called depositions.

After each of the prosecution's witnesses give their statements on oath, the accused or his or her advocate may put questions to that witness.

- If the accused does not have an advocate, you must ask the accused person if he or she wants to put any questions to the witness after the prosecution has examined him or her.

The witness's answers to the accused's questions will become part of the witness's deposition, so you should ensure that the answers are recorded.

After each statement of a witness is completed, it must be read back to him or her in the presence of the accused and corrected if necessary.

- You must ensure that the statement is interpreted into a language the witness understands when it has been written down in a language different than how it was given and if the witness does not understand that language.

If any witness denies the correctness of any part of his or her statement when it is read back, do not correct the statement of evidence, but:

- make a memoranda of the objection; and
- add any remarks you think necessary.

Once the deposition of a particular witness is completed, you should ensure that it is signed and dated by the witness.

Statement of the Accused

If you have considered the examination of the witnesses called on behalf of the prosecution and find that the evidence discloses sufficient grounds for committing the accused to trial, you **must**:

- ensure that the accused understands the charge;
- ask the accused if he or she wishes to make any statement in his or her defence;
- ask the accused if he or she wishes to make the statement on oath once they have chosen to make a statement; and
- explain to accused that he or she is not bound to make a statement but if he or she choose to do so, the statement will become part of the evidence at trial.

If the defendant is unrepresented, you must address the defendant with words to the following effect:

> *"Having heard the evidence against you, do you wish to give evidence yourself or to call witnesses? If you give evidence yourself you may be cross-examined. You are not obliged to give or call evidence but if you do, that evidence will be taken down and may be given against you at your trial. You should take no notice of any promise or threat that any person may have made to persuade you to say anything. If you do not give evidence in this Court, that fact will not be allowed to be the subject of any comment".*

Everything that the accused person says, either by way of a statement or evidence, must be recorded in full and shown or read back to the accused so that he or she can explain or add to the statement if he or she wishes.

Once the accused has declared his statement has been truthfully recorded, you shall attest to and certify that the statement or evidence:

- was taken in the presence and hearing of the accused; and
- is the accurate and whole statement of the accused.

After you have attested to and certified the statement of the accused, the accused person shall sign or attest to it by signing or marking the record. If the accused refuses to sign, note his or her refusal and the record may be used as if he or she signed and attested to it.

Evidence and Address in Defence of the Accused

After the accused has made a statement or given evidence, ask him or her if he or she wants to call a witness in his or her own defence.

You will take the accused's witnesses evidence in the same manner as for the prosecution.

Each witness for the accused, who is not merely a character witness for the accused, shall be bound by recognisance to appear and give evidence at the trial of the accused person.

You may adjourn a preliminary inquiry and issue process to compel the attendance of witnesses for the accused when the accused states he or she has witnesses but:

- they are not in Court;
- their absence is not due to any fault or neglect of the accused person; and
- the witnesses could give material evidence on behalf of the accused if they were present.

On the attendance of such witnesses for the accused, take their depositions and bind them by recognisance for the trial.

Accused or Accused's Advocate Addressing the Court

In a long form preliminary inquiry, the accused or his or her advocate may address the Court:

- after the examination of witnesses on behalf of the prosecution; or
- after the statement or evidence of the accused person if no witnesses for the defence are called.

If the accused or his or her advocate does address the Court, the prosecution will have the right of reply.

Other Witnesses

Ask the accused if he or she intends to call witnesses at the trial, other than those whose evidence has been taken under the above provisions, when the accused either:

- reserves his defence; or
- at the conclusion of any statement in answer to the charge or evidence presented in the accused's defence.

Get the names and addresses of the witnesses that the accused wishes to call at the trial so that you can record the details and they can be summoned when the trial begins.

Make an Order on the Retention of Exhibits

See Chapter 7 "Evidence" for how to deal with exhibits.

Make Your Decision

You must decide whether there is enough evidence to commit the accused for trial or whether he or she should be discharged.

4 Whether or Not There is a Case to Answer

A submission that there is no case to answer may be successfully made where:

- no evidence has been presented to support an essential elements of the offence; or
- the evidence presented is insufficient for a reasonable jury to find beyond a reasonable doubt that the defendant committed the offence.

Note that a finding that there is a case to answer is not an indication that the defendant is likely to be guilty of the offence.

5 The Form of the Decision

5.1 Discharging the Defendant: *s217 CPC*

After considering the statement (short form) or examination (long form) of witnesses for the prosecution, and after hearing the evidence for the defence, if any, you may find that the case against the accused is not sufficient to put him or her to trial.

If the case is not sufficient to put the accused to trial, you must order him or her discharged on the particular charge. You must record the reasons for discharging the accused.

By discharging the accused, you do not bar any subsequent charge being brought against the accused on the same set of facts.

On dismissal of one charge, the Court may investigate any other charge that the accused person would have been summoned for, or is alleged to have committed, if:

- if it is expedient to the interests of justice; and
- nothing in the *CPC* prevents you from proceeding

DPP applying for committal after a discharge

In any case where you have discharged the accused in a preliminary inquiry, the DPP can require you to transmit to him or her the record of the proceedings.

If the DPP is of the opinion that the accused person should not have been discharged, he or she can apply to a Judge for a warrant of arrest and committal for trial of the accused.

If the Judge is of the opinion that the case that was presented to you was sufficient to put the accused on trial, it shall be lawful for the Judge to issue the arrest warrant and commit the accused to prison for his or her trial: *s218(1) CPC*.

An application by the DPP under this provision of the *CPC* cannot be made after 6 months has passed from the date of the discharge: *s218(2) CPC*.

5.2 Committing the Defendant for Trial

If you decide that the case against the accused is sufficient to put him or her to trial:

- commit him or her to trial to the High Court; and
- either admit him or her to bail or send him or her to prison: *s219(1) CPC*.

When the accused is committed for trial, you must inform him or her that he or she is entitled to a free copy of the statements of witnesses from a short form preliminary inquiry, or to the depositions of witnesses in a long form preliminary inquiry, at any time before the trial: *s223*.

Committing Corporations for Trial
If the accused is a corporation and you find there is a sufficient case to put to trial, you may make an order authorising the DPP to file an information against the corporation which will be deemed a committal for trial: *s219(2) CPC*.

Transmission of records to the High Court
Once the accused is committed for trial, you must transmit to the Registrar of the High Court the:

- written charge;
- statements or depositions of witnesses;
- statement of the accused (if any);
- summonses or recognisances of witnesses and the complainant;
- recognisances of bail (if any); and
- documents or things which have been produced as exhibits: *s229 CPC*.

Binding over Witnesses and Complainants to the High Court
Short Form Preliminary Inquiry
When the accused has been committed for trial upon a short form preliminary inquiry:

- summon the witnesses whose statements were read over to the accused at the preliminary inquiry; and
- bind the witnesses by recognisance to appear at the trial or any further examination relating to the charge, with or without sureties: *s221(1)(a) CPC*.

If the accused person has pleaded guilty to the charge against him or her in a short form preliminary inquiry., it will not be necessary to summon or bind witnesses unless the DPP or the Trial Judge requests that you do so: *s221(1)(a) CPC*.

However, nothing in this section will prevent an accused person who has pleaded "guilty" under *s211(1)(b)* from altering their plea to "not guilty" once he or she appears before the High Court: *s221(2) CPC*.

Long Form Preliminary Inquiry
When the accused has been committed for trial upon a long form P.I., bind every witness by recognisance to appear at trial or any further examination relating to the charge, with or without sureties: *s221(1)(b) CPC*.

Refusal to be bound over

If a person refuses to enter into a recognisance when he or she is required to do so under *s221*, you may commit him or her to prison or into the custody of any officer of the Court until:

- after the trial; or
- he or she decides to enter into a recognisance: *s222 CPC*.

Summoning and conditionally binding Over a witness

Short Form Preliminary Inquiry
When the accused is committed for trial and it appears unnecessary that a witness be bound over for trial after the reading of his or her statements to the Court, you may, notwithstanding *s221 CPC*,

- refrain from summoning the witness; and
- transmit to the High Court a statement in writing of the name, address and occupation of the witness who has not been summoned: *s224(1)(a) ,(c) CPC*.

Long Form Preliminary Inquiry
When the accused is committed for trial and it appears unnecessary that a witness be bound over for trial after they have been examined, you may:

- bind him or her over conditionally upon notice given to him or her if they have **not** already been bound over; or
- direct that he or she will be treated as having been bound over conditionally, if the witnesses has been bound over already; and
- transmit to the High Court a statement in writing of the name, address and occupation of the witness who is being treated as bound over conditionally: *s224(1)(b) , (c) CPC*.

Even though a witness may not be summoned or is conditionally bound under this section, you must inform the accused of his or her right to require the attendance at the trial of any witness, and of the steps the accused must take to enforce the attendance: *s224(2) CPC*.

Exhibits
Any documents or articles produced as exhibits by any witness whose attendance is deemed unnecessary under *s224 CPC* shall be:

- marked as produced by such a witness;
- retained by the Magistrates Court; and
- forwarded to the High Court along with the statements or depositions of such witnesses: *s224(3) CPC*.

5.3 Summary Adjudication

If you decide, at the end or during the preliminary inquiry, that the offence is of such a nature that it falls within your jurisdiction, you may, subject to the other provisions of the *CPC*, hear the matter and either convict the accused or dismiss him or her.

If you have conducted a short form preliminary inquiry and found that the offence is in your jurisdiction, the witnesses for the prosecution must be called and evidence taken by them according to *Part 5 CPC* and the accused must be allowed to cross-examine them.

If you have conducted a long form preliminary inquiry and found that the offence is in your jurisdiction to determine, the accused shall be entitled to have the witnesses for the prosecution recalled for cross-examination or further cross-examination: *s220 CPC*.

6 Adjournments

You may adjourn the inquiry and warrant the remand of the accused to prison or other place of security for not more than 15 days at any one time, for:

- absence of witnesses; or
- any other reasonable cause.

If the remand is less than 3 days, order the officer or person who has custody of accused to keep him or her in their custody and then bring him or her to the Court for the continuation of the inquiry.

During a remand, you may order the accused to come before the Court at any time.

You may admit the accused to bail on a remand: *s214 CPC*.

7 Taking Depositions of Dangerously Ill Persons

You may take in writing, on oath or affirmation, the statement of any person who is:

- dangerously ill or hurt;
- not likely to recover; and
- willing to give evidence relating to any offence triable by the High Court and when it is not practicable to take the deposition according to the way set out in other sections of the *CPC*.

You must then:

- certify that the statement made by the dangerously ill person is accurate;
- provide a statement of your own for why you have taken such a statement;
- give the date and place of when and where the statement was taken and sign it; and
- preserve the statement and file it for record: *s225 CPC*.