**NOTICE TO THE PROFESSION RE: PRELIMINARY INQUIRIES AND FOCUS HEARINGS IN THE HAMILTON OCJ AS OF JULY 4, 2022**

As of July 4, 2022, the Hamilton Ontario Court of Justice will be initiating a new procedure relating to all cases for which a request has been made for a preliminary inquiry, with the exception of First or Second Degree Murder cases.  
For all cases other than First or Second Degree Murder, where counsel estimate that the preliminary inquiry will take 2 days or more, a focus hearing will be held (s. 536.4 of the Criminal Code) before dates are scheduled for the preliminary inquiry. A focus hearing will be conducted for these matters in lieu of a Judicial Pre-trial (JPT).

Therefore, before scheduling a JPT for any charges that are eligible for a preliminary inquiry, an accused must elect their mode of trial. If the accused elects to be tried by a judge alone or a judge and jury in the Superior Court of Justice, and the accused or the prosecutor makes a request for a preliminary hearing, a focus hearing will be scheduled.

If an accused does not make their election as to mode of trial for indictable offences that are eligible for a preliminary inquiry, a JPT cannot be scheduled, and the matter will be scheduled before a judge for case management. No JPT or focus hearing will be scheduled until the accused makes an election, or where the accused is put to their election and does not elect, is deemed to have elected to be tried by a court composed of a judge and jury.

A statement of issues and witnesses (s. 536.3 of the Criminal Code) must be filed in advance of the focus hearing. The focus hearing judge will have the discretion to adjourn the focus hearing if the statement of issues and witnesses is not filed.  
If either the Crown or the Defence intends to introduce evidence at the preliminary inquiry by way of s. 540(7) of the Criminal Code, the party must give the other party reasonable notice of his or her intention to tender such evidence, in advance of the focus hearing, together with a copy of the statement that is made by a witness in writing or otherwise recorded. The party seeking to tender s. 540(7) evidence will also file with the Court, in advance of the focus hearing, a precis of the evidence it intends to introduce by way of s. 540(7) so that the judge can conduct a meaningful focus hearing pursuant to s. 536.4.

If the party who receives notice of the other party’s intention to tender s. 540(7) evidence seeks to have an order made under s. 540(9) that the witness appear for examination or cross-examination at the preliminary inquiry, counsel for the party making this application under s. 540(9) must be prepared to make their submissions to the focus hearing judge, who will decide this issue at the focus hearing.

If no s. 540(7) evidence is being tendered at the preliminary inquiry, in advance of the focus hearing, the Crown must provide to the Defence and the Court a summary of the evidence it anticipates tendering at the preliminary inquiry to assist the preliminary inquiry judge to regulate the course of the inquiry including limiting the scope of the preliminary inquiry to specific issues and limiting the witnesses to be heard on these issues, pursuant to s. 537(1.01) of the Criminal Code.

A JPT will continue to be scheduled for First and Second Degree Murder cases. The judge who is scheduled to conduct the preliminary inquiry on a murder case may conduct a focus hearing pursuant to s. 536.4 of the Criminal Code on application of the prosecutor or the accused or on the judge’s own motion.

June 20, 2022  
Justice J.P.P. Fiorucci  
Local Administrative Judge  
Hamilton